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Right of peoples to self-determination

**Use of mercenaries as a means of violating human rights
and impeding the exercise of the right of peoples to
self-determination**

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 54/151 of 17 December 1999, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

* A/55/150 and Corr.1 and 2.

** In accordance with para. 1, sect. C, of General Assembly resolution 54/248, this report is being submitted on 30 August 2000 in order to contain as much updated information as possible.



**Report on the question of the use of mercenaries as a means
of violating human rights and impeding the exercise of the
right of peoples to self-determination, submitted by the
Special Rapporteur of the Commission on Human Rights**

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I. Introduction

1. During its fifty-fourth session, the General Assembly adopted resolution 54/151 of 17 December 1999 by which, *inter alia*, it decided to consider at its fifty-fifth session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. It requested the Special Rapporteur to report his findings on the question, with specific recommendations, to the General Assembly at its fifty-fifth session.

2. The General Assembly recognized that armed conflict, terrorism, arms trafficking and covert operations by third Powers, *inter alia*, encourage the demand for mercenaries on the global market and reaffirmed that the recruitment, use, financing and training of mercenaries are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. The Assembly urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take the necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government of any State or threaten the territorial integrity and political unity of sovereign States, or to promote secession or to fight the national liberation movements struggling against colonial or other forms of alien domination or occupation.

3. The General Assembly invited States to investigate the possibility of mercenary involvement whenever criminal acts of a terrorist nature occur in their territories and to cooperate fully with the Special Rapporteur in the fulfilment of his mandate, and welcomed the cooperation extended by those countries that had invited the Special Rapporteur.

4. The General Assembly requested the Secretary-General to invite Governments to make proposals towards a clearer legal definition of mercenaries, and, in this regard, requested the United Nations High Commissioner for Human Rights to convene expert meetings to study and update the international legislation in force and to propose recommendations for a clearer legal definition of mercenaries that would

allow for more efficient prevention and punishment of mercenary activities. It also requested the Office of the United Nations High Commissioner for Human Rights, as a matter of priority to be programmed in its immediate activities, to publicize the adverse effects of the activities of mercenaries on the right to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries.

5. In this regard, the Special Rapporteur wishes to report that he is continuing to work on the analysis of the question of mercenaries, with a view to submitting proposals to the General Assembly on a clearer legal definition of mercenaries. At the same time, he notes that he has not yet been able to avail himself of the support that would be forthcoming from an expert meeting, which, by studying international legislation and the status of the question, could formulate suggestions with regard to the legal definition of mercenaries. It is to be hoped that the arrangements for the holding of this meeting, which has been decided on by the Assembly and for which financing is available, will be expedited.

6. The General Assembly welcomed the adoption by some States of legislation that restricts the recruitment, assembly, financing, training and transit of mercenaries and called upon all States that had not yet done so to consider taking the necessary action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

7. At its fifty-sixth session, the Commission on Human Rights expressed itself in similar terms by adopting resolution 2000/3 of 7 April 2000, which, *inter alia*, reiterates the importance of a clearer legal definition of mercenaries and reaffirms that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations.

8. Accordingly, and pursuant to the above-mentioned resolution 54/151, the Special Rapporteur has the honour to submit this report to the General Assembly for consideration at its fifty-fifth session.

II. Activities of the Special Rapporteur

A. Implementation of the programme of activities

9. The Special Rapporteur visited Cuba from 12 to 17 September 1999, in response to an invitation from the Government of that country. During his visit he was able to meet with senior officials of the Cuban Government, eminent academics and experts, specialized legal scholars, representatives of the tourism sector and members of non-governmental organizations. An account of the visit is contained in chapter II of the report submitted by the Special Rapporteur to the Commission on Human Rights (E/CN.4/2000/14 and Corr.1). The Special Rapporteur reiterates his appreciation to the Cuban authorities for their invitation and for the cooperation provided to him during his mission. He notes further that he is continuing to follow up the matter in the interests of ensuring that the actions in this case, which affected the self-determination of a people and the lives and physical integrity of individuals and caused serious economic harm, should not go unpunished.

10. The Special Rapporteur submitted his report to the Commission on Human Rights on 22 March 2000. While in Geneva, the Special Rapporteur held consultations with representatives of various States and met with members of non-governmental organizations. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

11. The Special Rapporteur returned to Geneva on two occasions, from 5 to 9 June 2000 and from 21 to 24 August 2000, to hold various consultations, take part in the 7th meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights, and draft this report.

B. Correspondence

12. Pursuant to General Assembly resolution 54/151 and Commission on Human Rights resolution 2000/3, the Special Rapporteur sent a communication on 16 June 2000 to all States Members of the Organization, requesting the following: (a) information on the

possible existence of any recent mercenary activities; (b) participation by nationals of their country as mercenaries in committing acts against the self-determination and sovereignty of other States; (c) information on the possible existence of mercenary activities in the territory of another State; (d) information on the possible participation of mercenaries in committing internationally wrongful acts; (e) information on domestic legislation and on treaties outlawing mercenary activities; (f) suggestions by their Governments for enhancing the international treatment of the topic of outlawing mercenary activities; and, lastly, (g) information and views on private security service and military advice and training companies.

13. By a letter dated 19 June 2000, the Ambassador of Antigua and Barbuda to the United Kingdom of Great Britain and Northern Ireland, Mr. Ronald Sanders, transmitted the following reply by his Government to the questionnaire sent by the Special Rapporteur:

"Thank you for your letter of 16 June 2000 concerning information related to General Assembly resolution 54/151 and Commission on Human Rights resolution 2000/3. The answers to the questions are as follows: (a) None; (b) None; (c) None; (d) None; (e) Antigua and Barbuda is not a signatory to the Convention; (f) My Government has insufficient experience in the area of mercenaries to offer any constructive suggestions; (g) No information. We have no views on this matter that could be considered informed or knowledgeable.

"Of course, in relation to item (c), actions that affect the sovereignty of a country, the exercise of the right of its people to self-determination and its enjoyment of human rights are not limited to mercenary activities in the territory of another State. States, particularly small ones, regularly experience actions from larger and more powerful States which affect their sovereignty and the exercise of their right to self-determination. Equally, the activities of some multinational companies (not even large ones) also sometimes affect the sovereignty of small countries and the enjoyment of human rights.

"If anything, therefore, the two resolutions to which we are asked to respond are narrow in

their scope when they focus only on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination."

14. By note verbale No. 656 of 7 July 2000, the Permanent Mission of Cuba to the United Nations Office at Geneva replied to the request for information from the Special Rapporteur, as follows:

"The Government of the Republic of Cuba attaches immense importance to the efforts made in the framework of the United Nations system with a view to condemning and combating the recruitment, use, financing and training of mercenaries. Particularly important is the monitoring by the Commission on Human Rights of the adverse impact of mercenary activities on the enjoyment of all human rights, especially the right of peoples to self-determination. The adoption of the 1989 Convention by means of General Assembly resolution 44/34 was a landmark in the development of an international legal framework for combating mercenary activities, despite any limitations which that instrument may have.

"Cuba considers that there is a fundamental need to promote ratification of the 1989 Convention by States that have not yet done so in order to permit its entry into force, and is itself immersed in the required domestic procedures with a view to the possible ratification of that instrument. Cuba has previously transmitted to the Office of the United Nations High Commissioner for Human Rights its substantive contributions and views regarding a possible strengthening of the international legislative framework for combating the use of mercenaries. Some of these views are reiterated in this note.

"Nevertheless, the Government of the Republic of Cuba wishes to take this opportunity, above all, to express its profound regret that the Office of the United Nations High Commissioner for Human Rights has not convened an expert meeting to examine the question of the progressive development of the international legal framework for combating mercenary activities in all their forms and manifestations, as decided on by the General Assembly at its fifty-

fourth session and reaffirmed by the Commission on Human Rights at its fifty-sixth session.

"Convinced that the time-frame established in Commission on Human Rights resolution 2000/3 for the convening of the aforesaid expert meeting will be complied with, the Cuban Government informs the Office of the United Nations High Commissioner of its special interest in nominating a Cuban expert to participate in that meeting.

"Mercenary activities were defined in the Cuban Penal Code of 1979. The definition of such activities was reproduced verbatim in article 119 of the Penal Code of 1998, currently in force. Cuba considers that the definition of mercenaries set out in article 1 of the 1989 Convention does not take sufficient account of the various manifestations of mercenary activity and, furthermore, lays down excessive requirements for characterizing mercenaries as such, essentially because it requires that those manifestations appear concurrently. The Cuban Government has stated that it is inappropriate to use as a criterion for the definition of mercenaries the amount of remuneration received for carrying out mercenary activities.

"Moreover, to exclude from the definition of mercenaries nationals who, in exchange for remuneration, act against the interests of their own country in the service of a foreign Power or interest particularly weakens its scope. Cuba has recently made specific proposals concerning a possible reformulation of the concept of mercenaries which remain fully relevant.

"The Government of the Republic of Cuba attaches special significance to the discharge of the mandate of the Special Rapporteur of the Commission on the question of mercenaries and is therefore doing its utmost to intensify its cooperation with Mr. Enrique Bernales Ballesteros, who has been acting in that capacity with great professionalism.

"In response to an invitation from the Cuban Government, Mr. Bernales Ballesteros paid a fruitful visit to the country, during which he was presented with abundant testimony and documentary evidence concerning the mercenary activities carried out against Cuba in recent years.

The evidence directly involves organizations and persons residing in countries geographically close to Cuba, whence they operate; accordingly, the Cuban Government calls upon the Governments of the States concerned, particularly the Government of the United States of America, to consider the possibility of inviting the Special Rapporteur to visit them."

15. By note verbale dated 31 July 2000, the Permanent Mission of Pakistan to the United Nations Office at Geneva transmitted to the Special Rapporteur the following comments by the Government of Pakistan on resolutions 54/151 of the General Assembly and 2000/3 of the Commission on Human Rights:

"(a) The Government of Pakistan believes that mercenary activities pose a serious obstacle to the realization of people's right to self-determination;

"(b) The activities of mercenaries impede the realization of people's right to self-determination on two distinct levels: (i) by subverting the authority of the institutions of the State(s) to exercise full control over their resources and how they choose to dispose of them, among other things by terrorizing the population and associating with criminal elements/organized crime cartels; and (ii) preventing people from determining their political destiny and the future affiliation of their State;

"(c) Over the years, the Special Rapporteur on the question of the use of mercenaries has focused on the first aspect of mercenary activities. The second aspect has not received sufficient attention. Indeed, at times there appears a certain mixing up of these two very distinct dimensions of the same problem. The reports of the Special Rapporteur sometimes read as if they disapprove of the legitimate actions of peoples whose right of self-determination is recognized, inter alia, through United Nations Security Council resolutions, as 'mercenary activities';

"(d) Nothing could be further from the truth. Mercenaries and freedom fighters have nothing in common. Mercenaries act to impede the realization of peoples' right to self-determination. Freedom fighters act to promote

and realize it by opposing foreign occupation and aggression;

"(e) According to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people (...) Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such people are entitled to seek and to receive support in accordance with the purposes and principles of the Charter;

"(f) Those engaged in denying the legitimate and established right to self-determination of a people in contravention of the above-mentioned principles have always found it expedient to label such peoples as terrorists. In such conditions, State organs are themselves engaged in systematic State terrorism against the occupied people. To further confuse the issue, such States also frequently label persons struggling for their right to self-determination as mercenaries, while systematically engaging the services of mercenaries to counter the freedom struggle;

"(g) Such mercenaries are given titles such as 'counter-militants', while in reality they fit the classic description of mercenaries. Their motive for participation in hostilities is financial and material gain. They generally render the following services: (i) inform on people believed to be sympathetic to the freedom struggle; (ii) harass the subject population; (iii) intimidate human rights defenders, particularly lawyers, journalists, academics and the political leadership of the subject people; (iv) carry out acts of, inter alia, torture, enforced and involuntary disappearances, extrajudicial executions, rape and

molestation of women at the behest of the occupying power;

"(h) The rewards these mercenaries receive are: (i) financial gratification and material benefits; (ii) permission to run protection rackets as long as these do not interfere with the activities of the occupying Power; and (iii) employment in government service, including in military and paramilitary outfits. Such activities deserve the condemnation of the international community as posing one of the most serious obstacles to the realization of peoples right to self-determination."

16. In response to the observations contained in the communication from the Government of Pakistan, the Special Rapporteur notes that his reports have always referred to mercenary activity as a criminal act that prevents or impedes the exercise by peoples of their right to self-determination and that such activity is also a violation of human rights. This view is consistent with the nature and scope of the mandate entrusted to him in 1987 by the United Nations Commission on Human Rights. More than once in his reports, the Special Rapporteur has mentioned the names of national liberation movements engaged in a legitimate struggle for the self-determination of their peoples and which have been recognized as such by the United Nations. He also denounced the criminal acts committed by mercenaries against members of liberation movements. He referred, moreover, to the means used by mercenaries to obstruct or overthrow a legitimate constitutional Government, thereby affecting the exercise by the people concerned of their right to self-determination.

17. Lastly, the Special Rapporteur has adhered to the current international norms for defining a mercenary. A person fighting in his country for a legitimate cause of liberation, or in a foreign territory but within the framework of international agreements, is not a mercenary. On the other hand, a soldier who sells his professional skills and is recruited, trained and financed to participate in the internal affairs or armed conflicts of a country different from his own is a mercenary, even though he may claim certain attributes in order to be accepted as a freedom fighter.

18. In his letter dated 7 August 2000, Mr. Rusudan Beridze, Deputy Secretary for Human Rights Questions of the National Security Council of Georgia,

transmitted to the Special Rapporteur the following response to the questionnaire sent to all Governments of States Members of the United Nations:

"(a) On the territory of Georgia we have no mercenary activities except in Abkhazia (Georgia), which is not under the jurisdiction of Georgia and we have no reliable information on the situation in this region. It should be mentioned that, during the conflict in Abkhazia, several thousand mercenaries from the Russian Federation and countries of the Near East participated in the armed conflict. Some of them are still living in Abkhazia, the separatist government having awarded them the houses of expelled Georgians;

"(b) We have no examples of the participation of Georgian citizens as mercenaries in any country;

"(c) Mercenary activities in North Caucasus, especially in Chechnya (the Russian Federation), may be a threat to the security of Georgia;

"(d) There have been acts of abduction of persons and drug trafficking from Chechnya;

"(e) The Parliament of Georgia, on 3 May 1995, ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989;

"(f) We suppose that it would be desirable to establish under the auspices of the United Nations a new international service aimed at the revelation and neutralization of organizations and funds promoting and financing mercenary activities;

"(g) Peacekeeping forces of the Commonwealth of Independent States (CIS) (in fact military forces of the Russian Federation) have been deployed since June 1994 on both sides of the river Enguri. Their mandate includes the maintenance of the Agreement on a Ceasefire and Separation of Forces (S/1994/583 and Corr.1, annex I) in the conflict of Abkhazia (Georgia). Peacekeeping forces unfortunately could not protect the civilian population from the violence in the Gali region, where more than 1,500 people have been killed. Despite this fact, the

peacekeeping forces have managed to fulfil their main function."

19. Following up on his official mission to Cuba in September 1999, the Special Rapporteur transmitted the following letters:

(a) Letter dated 16 June 2000 addressed to Mr. Gabriel Orellana Rojas, Minister for Foreign Affairs of Guatemala, requesting official information on the allegations concerning the use of Guatemalan territory for planning a number of attacks against tourist facilities in Havana and for the recruitment and training of several of the perpetrators of the attacks. It may be recalled that Francisco Antonio Chávez Abarca, alias Manuel González, one of the presumed masterminds, is alleged to have recruited Raúl Ernesto Cruz León and three Guatemalan citizens, Nader Kamal Musallam Barakat, María Elena González Meza de Fernández y Jazid Iván Fernández Mendoza;

(b) Letter dated 16 June 2000 addressed to Ms. María Eugenia Brizuela de Ávila, Minister for Foreign Affairs of El Salvador, requesting official information on the use of the territory of El Salvador for the planning of a number of attacks against tourist facilities in Havana and for the recruitment and training of some of the perpetrators of the attacks. As the report of the Special Rapporteur to the Commission on Human Rights states, Luis Posada Carriles, alias Ignacio Medina, is alleged to have recruited Otto René Rodríguez Llerena, a citizen of El Salvador;

(c) Letter dated 6 July 2000 addressed to Ms. Madeleine Korbelt Albright, Secretary of State of the United States of America, requesting official information on a number of organizations of Cuban origin formed and operating in Miami, Florida, with which several of the masterminds of the attacks against the tourist facilities in Havana are alleged to be linked. Information is requested specifically about any investigations that might have been conducted into the participation of members of these organizations in the recruitment, hiring, financing and use of mercenaries to carry out acts of sabotage and terrorism in Cuba.

20. By letter dated 28 July 2000, Mr. Víctor Manuel Lagos Pizzati, Permanent Representative of El Salvador to the United Nations Office at Geneva, informed the Special Rapporteur that he had received the following information from the Salvadoran authorities:

"First of all, when the events occurred, the National Civil Police of El Salvador opened an investigation into the case. However, the lack of information and of international cooperation hampered the investigations and made it difficult to confirm information and to take steps to clarify the acts that were alleged. Had there been cooperation from other Governments and had information been provided on the case, investigations would certainly have been carried out and the persons identified as suspects arrested and brought before the appropriate judicial bodies in order to initiate legal proceedings.

"With respect to Luis Posada Carriles, the Ministry of the Interior has stated that the immigration control statistics on entries and departures of nationals and foreigners showed that it has been more than 10 years since the person in question last entered El Salvador. As for Francisco Chávez Abarca, no court or administrative orders are pending against him, and his freedom to enter or leave the country cannot therefore be legally restricted. Moreover, no travel restriction exists in the immigration files against any person by the name of Ignacio Medina, although a departure ban is in force against persons with the name Manuel González. This ban will be enforced if such a person is found attempting to leave the country.

"The Government of El Salvador reiterates its firm rejection and condemnation of any terrorist acts, particularly those related to illicit mercenary activities, that clearly violate human rights, the right of peoples to self-determination and the stability of Governments, and it intends to conduct the necessary investigations, provided that evidence is presented to support such investigations, with a view to clearing up the case and enabling the appropriate legal proceedings to be instituted."

21. In another communication of the same date, the Permanent Representative of El Salvador to the United Nations Office at Geneva wrote as follows:

"El Salvador has stated that it is opposed to mercenary activities, whatever their form or the geographic areas in which they occur, because they impede the effective enjoyment of human rights, the stability of Governments and the

economic development of peoples. Moreover, El Salvador's rejection and condemnation of mercenary activities have a historical motive, because during its armed conflict the country was itself confronted with the involvement of foreigners, who joined with irregular groups in arms trafficking and in committing acts of sabotage and terrorism.

"In Central America, within the framework of the 'Esquipulas II' regional peace process, the Presidents reiterated their commitment to prevent the use of their territory by persons, organizations or groups attempting to destabilize other States, and not to provide or permit the supply of military or logistic support to them. These commitments were set out in the Framework Treaty on Democratic Security in Central America, signed on 15 December 1995 (A/51/67, annex II).

"In the United Nations, the Government of El Salvador has been a longstanding sponsor and supporter of the important resolutions adopted by the General Assembly and the Commission on Human Rights on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination:

"(a) At the institutional level, no information is available on the possible existence of any recent mercenary activities in El Salvador (recruitment, financing, training, assembly, transit or use of mercenaries);

"(b) As for available information on the participation by nationals of El Salvador as mercenaries in committing acts against the sovereignty of other States, acts against the exercise of the right of other peoples to self-determination or in human rights violations, the only case is the so-called 'Cruz León' case;

"(c) No information is available either on the possible existence of mercenary activities in the territory of another State from which actions are carried out that affect or potentially affect the sovereignty of El Salvador, the exercise of the right of the people to self-determination and their enjoyment of human rights;

"(d) With regard to the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads and paramilitary organizations, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband, no information is available, as was mentioned in subparagraph (b) above;

"(e) Nor do we have any evidence, information or views on private security service and military advice and training companies offering their services to Governments in order to intervene in internal armed conflicts with the assistance of mercenary military professionals for the purpose of improving the military effectiveness of government forces, in exchange for cash benefits and shares in the investments and economic ventures of the country in which they operate.

"The structure of the National Civil Police of El Salvador includes operational units capable of reacting to any possible mercenary activities in the country. One of these units is the Office for the Coordination of Investigations, of which the Criminal Investigation Division is a part. The Criminal Investigation Division in turn includes a Department for the Investigation of Organized Crime (DICO) which, together with the International Criminal Police Organization (INTERPOL) office in El Salvador, works to suppress organized crime by coordinating its activities with other countries. To this end, information has been shared with other Central American countries on possible criminal conduct and actions in the region of Central America which may show a certain degree of organization.

"The Office for the Coordination of Investigations also has a Borders Division, whose purpose is to help ensure the proper management of resources for preventing and combating violations of the legislation governing travel into and out of the country, by air, land or sea. This Division carried out 28,506 operations during the period from June 1999 to May 2000, including immigration controls, controls of illegal persons, deported immigrants and vehicles, preventive patrols and detentions. As a result, 1,761 illegal immigrants were located and a total of 1,759

persons deported for being in the country illegally.

"All of these actions have helped to maintain the security of citizens both in the border regions and in the country's interior by preventing illegal activities from being carried out.

"The National Civil Police has other units such as the Drug Control Division, the Technical and Scientific Police and the Kidnap Prevention Department that can also take action to suppress mercenary activities.

"In addition, the National Civil Police has an Office for Coordination in Specialized Areas, which includes the Division of Arms and Explosives, the Airborne Police Group, the Maritime Police Group and the Police Reaction Group. All of these specialized units are capable of preventing mercenary activities from being carried out in our country and of intervening directly when necessary."

22. In its note verbale dated 4 August 2000, the Permanent Mission of the United States of America to the United Nations Office at Geneva transmitted the reply of Madeleine Korbelt Albright, Secretary of State of the United States of America, to the Special Rapporteur's request of 6 July 2000 for information. The reply reads as follows:

"Thank you for your letter of 6 July regarding your report to the United Nations General Assembly and the Commission on Human Rights on the use of mercenaries. We forwarded your questions regarding alleged involvement of organizations in the United States in supporting terrorist acts in Cuba to the Federal Bureau of Investigation (FBI).

"The FBI has a pending investigation into these allegations. It is their policy not to discuss the status of pending investigations, so the information we can provide you at this time is extremely limited.

"Representatives of the FBI met with representatives of the Cuban Government on two occasions concerning these allegations. On 28 October 1999, the FBI sent a request through the United States Department of State to the Cuban Government for their assistance related to the

investigation. To date, the Cuban Government has not responded.

"Thank you for your evident interest in producing a fair and balanced report. If we may be of further assistance, please do not hesitate to contact us again."

23. The Special Rapporteur also wrote to the Governments of Afghanistan and the Russian Federation in letters dated 8 June 2000, requesting from them, respectively, official information on the presence of foreign combatants and possibly of mercenaries in Afghan territory controlled by the Taliban and in Chechnya. No response has been received to these communications. Non-government sources have informed the Special Rapporteur that foreigners recruited mainly in Islamic countries are allegedly being trained in Afghan territory in the use of arms and explosives. After receiving training, they are reportedly being sent to fight in the north of Afghanistan.

24. The Special Rapporteur is giving careful consideration to the substantive notes sent by the Governments of Antigua and Barbuda, Cuba, El Salvador, Georgia, Pakistan and the United States of America. Each of these notes contains elements that are very useful for his mandate and provide material that can be used to expand and clarify various aspects of mercenarism, with regard to both its legal definition and its broader characterization in situations involving mercenaries.

25. During the reporting period, the Special Rapporteur continued to receive the cooperation of various non-governmental organizations, including, in particular, Amnesty International of the United Kingdom, Human Rights Watch and International Alert. He also received communications from the Bahrain Human Rights Organization, in Copenhagen; the Muttahida Qaumi Movement (MQM), in the United Kingdom; the Royal Institute of International Affairs (Chatham House), in London; and the Organization for Defending Victims of Violence, in Tehran. The Special Rapporteur expresses appreciation for the cooperation of these non-governmental organizations in the fulfilment of his mandate.

III. Mercenary activities in Africa

26. From the outset, this mandate has been linked to the palpable deterioration of the situation in some African countries, whose political problems or disputes with neighbouring countries have resulted in armed conflicts. As these conflicts developed, one or all sides to the conflict have hired mercenaries, who have offered themselves for hire to reap monetary gains for committing lethal acts of violence. This mercenary presence is an established fact in various African conflicts and has led to atrocities and the prolongation of war. Although mercenarism is not exclusive to African countries, Africa is the continent where it is most persistent and most seriously damaging. Many armed conflicts on the continent stem from chronic political instability and the presence of valuable natural resources, which outsiders seek to control by encouraging and arming allies within the country to enable them to take power. Subsequently, mercenaries with individual military skills, or, in a more sophisticated form, private military security companies that use small, well-organized mercenary armies to pacify the country have become involved.

27. In some places, conflicts have been ended by peace agreements, which are not always firm and lasting, while in other areas the armed confrontation has never ceased, nor has the intervention of mercenaries, arms merchants and traffickers whose sole interest is to exploit the natural wealth of Africa. Thus, bearing in mind that the dialectic of specific conflicts differs from one situation to another, the defence of life, viability, self-determination and respect for development throughout the African continent should be of concern as an overall policy. Mercenarism has been and remains one of the most negative factors in this scenario. The situation in Sierra Leone, which the Special Rapporteur has dealt with in previous reports, continues to be especially grave, owing to the presence of mercenaries who have become involved in the conflict in various ways. As is well known, the legitimate Government of President Ahmed Tejan Kabbah signed a peace agreement in Lomé with Foday Sankoh's Revolutionary United Front (RUF) on 7 July 1999 (S/1999/777, annex). In his previous report to the General Assembly, the Special Rapporteur pointed out that the agreement really represents a power-sharing deal, providing for an amnesty that literally guarantees impunity for the perpetrators of serious violations of human rights and of international humanitarian law

since 1991. Prevailing international law, however, prohibits amnesties that cover crimes against humanity, war crimes or acts of genocide. The peace agreement says nothing, moreover, about the international security companies that took part in the conflict and through which mercenaries were introduced.

28. Some RUF troops complied with the agreement by surrendering their weapons and demobilizing, for which they each received US\$ 150. Most, however, far from demobilizing and assembling in given areas, remained armed in diamond-producing regions of the country. Later, RUF elements kidnapped hundreds of soldiers of the United Nations Mission in Sierra Leone (UNAMSIL) and captured valuable weaponry, including tanks. Their control of the diamond mines continues to enable them to finance their activities, and the crimes they have committed, including the worst systematic and massive mutilations practised anywhere in the world, have yet to be punished. The international community, particularly those countries that are involved in the diamond trade, should unreservedly support the strengthening of democracy and human rights in Sierra Leone. At the same time, such countries should avoid committing any act or making any concession or omission that might involve them in the responsibility for the terrible events occurring in that country. In any case, the tragedy of Sierra Leone again demonstrates that it is wrong to think that private military security companies help to ensure the governability of the countries where they operate. The firm Executive Outcomes operated in Sierra Leone from May 1995 to January 1997 and resolved nothing, as can be seen by what has happened in the country since 1997. The Special Rapporteur considers that regional security mechanisms should be strengthened to enable them to help promote democracy, respect for the rules of international humanitarian law and the effective enjoyment of human rights.

29. After more than two years of armed conflict, the situation in the Congo is beginning to show some signs of hope, two of which are the acceptance of the mediation offered by the President of Gabon, Omar Bongo, and the opening of a national dialogue between the government party and 16 opposition parties, most of whose leaders are still in exile. The Government of President Denis Sassou Nguesso has ordered the demobilization and dissolution of the militias. The Special Rapporteur expresses his good wishes for the success of this national dialogue and the hope that, in a

context of reconciliation, all isolated militia activities will cease and an impartial investigation can be made of all reports of human rights violations during the conflict.

30. In the Democratic Republic of the Congo, despite a number of attempts to negotiate peace and despite the ceasefire agreement of 10 July 1999 (S/1999/815, annex), the armed conflict continues in various parts of the country, mainly in the regions of North and South Kivu. Recently, a meeting convened on 13 August 2000 in Lusaka in support of the ceasefire resulted in failure. Armies opposing the Government of President Laurent Kabila, such as the Congolese Rally for Democracy (RCD) and the Movement for the Liberation of Congo (MLC), are supported by troops from Angola, Namibia and Zimbabwe. In this connection, the presence of mercenary combatants has been reported, whose primary interest seems to be the Mbuji-Mayi region, the diamond capital of the province of West Kasai.

31. The Special Rapporteur wishes to refer once again to the worsening of the conflict in Angola. Hundreds of thousands of deaths have occurred during this long war, and a million people, representing 10 per cent of the country's population, have been displaced internally. Clearly, the União Nacional para a Independência Total de Angola (UNITA) has stopped complying with the peace agreements it signed in Lusaka (S/22609, annex) and has unilaterally resumed armed hostilities against the Government. The reason for this rebellion appears to be the unwillingness of UNITA to surrender its weapons and withdraw from the territories under the control of its armed organization. It is estimated that this control has enabled UNITA to generate revenues of some \$3 billion to \$4 billion through the diamond trade. It seems that some major Western firms have benefited from such transactions. Despite the embargo imposed by the United Nations, weapons continue to reach UNITA by various alternative routes used illegally by the latter. It has been reported that the territories of Burkina Faso, Congo, the Democratic Republic of the Congo, Togo, South Africa and Zambia are being used to evade the arms embargo imposed against UNITA by the Security Council in its resolution 864 (1993) of 15 September 1993. Other sources state that UNITA continues not only to acquire modern, sophisticated weapons, but also to hire Eastern European mercenaries to strengthen its military capacity. In brief,

the conflict continues; the embargo imposed against UNITA by the United Nations is being violated; and peace is far from being achieved in Angola.

IV. Current status of mercenary activities

A. Legal definition

32. The General Assembly, in its resolution 54/151 of 17 December 1999 and earlier resolutions, stressed the need for a better and more precise legal definition of mercenaries that would make for more efficient prevention and punishment of mercenary activities. In this connection, it requested Governments to make proposals towards a clearer legal definition of mercenaries and requested the Office of the United Nations High Commissioner for Human Rights to convene expert meetings to study and update the international legislation in force and to propose recommendations. The Special Rapporteur is concerned about this topic as well. Accordingly, he has repeatedly requested Member States to submit relevant information, suggestions, comments and proposals. The Special Rapporteur also looks forward to the expert meetings, in order to incorporate the thinking and analysis produced at that level into an improved, updated conceptual management of mercenarism.

33. Although the general focus of the replies of Member States has been to provide the requested information on mercenary activities, all have agreed in their condemnation of mercenaries, calling them agents that threaten self-determination, undermine sovereignty and, through their own actions, represent natural subversives that endanger life, peace, political stability and the natural resources of the countries where they become involved. The Special Rapporteur considers it significant that no State has attempted to justify mercenary activities in any way in its replies to his communications or suggested criteria to distinguish between prohibited and permitted mercenaries. While in the past the so-called undercover operations of some Powers used mercenaries, it would seem that this is no longer an acceptable method in the current context of globalization.

34. This international consensus on the condemnation of mercenary activities is a prime factor to be considered in an effort to update the legal definition.

The Special Rapporteur has noted the same consensus with regard to the use of mercenaries by private companies that offer military security on the international market. The view that their activities should be regulated and monitored does not hold that such companies should be eliminated, nor that the State should have an exclusive monopoly in matters of security; it does affirm, however, that these companies should be prevented from becoming directly involved in armed conflicts and intervening in them by hiring and forming battalions of mercenaries to take part in warfare.

35. The currently accepted meaning or use of the term mercenary is primarily focused on including in this rubric professional services that are paid to recruit soldiers to intervene in an armed conflict in a country other than their own. The concept thus appears to be linked to self-determination. Nonetheless, the hiring of this type of professional services extends to other illicit activities, such as arms trafficking, drug trafficking, terrorism, acts of destabilization of legitimate Governments and acts to take forcible control of valuable natural resources. None of these aspects falls strictly under article 47 of Additional Protocol I to the Geneva Conventions. Not all these types of activities are carried out by mercenaries; some, however, are. A revision of the legal definition of mercenaries should embody a concept that is broad enough to take into account the various types of crimes that are included in mercenary activities.

36. Mercenaries are usually, or have been, soldiers, combatants or, more frequently, members of special units and have experience with sophisticated weapons; this applies particularly to those recruited to take part in combat and to train those who are to make up battalions, columns or command units. The mere fact that it is a Government that recruits mercenaries or hires companies that recruit mercenaries, either in its own defence or to provide reinforcements in armed conflicts, does not make such actions any less illegal or illegitimate. Governments are authorized to operate solely under the Constitution and the international treaties to which they are parties. This point of view should be taken into account in a new legal definition of mercenaries.

37. The aim of the rules of customary international and treaty law is, in essence, to combat mercenary acts in the broad sense of the buying and selling of military services that are not subject to the prevailing

humanitarian standards applying to armed conflicts, and that are likely to lead to war crimes and human rights violations. If nationals of the affected country are used, they cannot, strictly speaking, be considered mercenaries, but, on the part of those recruiting them, the aim of using them as mercenaries is objectively undeniable, as is the willingness of such nationals to accept a relationship that turns them into mercenaries. Therefore, the requirement to be a non-national of the country in which the mercenary becomes involved should also be reviewed, to give greater weight in the definition to the nature and purpose of the illicit act to which an agent is paid to be associated. In brief, the information summarized here, although it is not complete, demonstrates the need to establish a legal definition of mercenaries that will be efficient and applicable.

B. Operational model

38. Whatever their origin, mercenaries are a danger to the peoples who are subjected to their activities. The mercenary bears criminal responsibility; however, those who recruited, trained, financed and contracted for mercenaries are also implicated. The condemnation by the General Assembly should be directed not only at mercenary soldiers but also at those who recruited and hired them. In this respect, the Special Rapporteur differs with those who maintain that mercenary activities are marginal and do not merit the continued concern of the Assembly. This point of view does not consider the reality of the peoples affected and does not delve into the complex nature of mercenary activities, nor does it pay heed to the disastrous consequences of tolerating such activity.

39. The Special Rapporteur cannot remain silent about this view, because the empirical evidence indicates that mercenarism works against peace, political stability, respect for the rule of law and democracy, the capacity to exploit natural resources rationally, the harmonious integration of the population and efforts to redistribute wealth to prevent extreme poverty. When all these positive factors come together, the risk of mercenary activity is minimal. On the contrary, when those factors are missing or are doubtful, scarce, intermittent or conflict-ridden, or run counter to destabilizing interests, the risk of mercenary involvement grows.

40. This is true because violence and lust for power are likely to lead to some type of connection to mercenaries, or because third Powers, who do not wish to be seen as directly involved or to be accused of interventionism, chose this path to gain some type of advantage. Mercenaries can be recruited, trained and financed in strong, stable countries, but they are used mainly in countries that are afflicted by political violence, internal armed conflict, rebellion or insurgency and lack the financial and technological capacity to exploit their natural resources on an industrial scale.

41. The reputed greater efficiency of military units formed, led or trained by mercenaries is an unacceptable argument. It took root at a stage when State military forces had to be eliminated or significantly reduced, opening the doors to mercenary organizations which took charge both of maintaining internal order and protecting a country's borders.

C. Private security and military assistance companies operating internationally

42. The Special Rapporteur continues to receive and classify reports referring to the recruitment, contracting and use of mercenaries by private companies that offer military security services on the international market. Some of these companies are involved in armed conflicts, providing training to combat forces or pilots for troop transport and offering specialized technical services; on occasion, they actively participate in combat situations.

43. The concern does not come from the private nature of these companies. The private sector has traditionally contributed to the development of military science and technology, and their contributions have been particularly useful in the areas of basic and applied scientific research, technological innovation, development of new strategies, advisory and project evaluation services, and others. The problem arises when those companies enter into contracts to recruit, hire and use mercenaries and become involved in armed conflicts to such an extreme that they supplant the State and its armed security forces.

44. While private companies play an important role in the area of security, there are certain limits that should not be exceeded. They should not participate actively in armed conflicts, nor recruit and hire

mercenaries, much less attempt to replace the State in defending national sovereignty, preserving the right of self-determination, protecting external borders or maintaining public order.

45. The Special Rapporteur believes that the apparent connection between an increase in mercenary activity and the well-known inadequacy of international rules in that area should be examined. Moreover, the trend towards concealing mercenarism behind modern private companies could be due to the failure of international law to predict the new operational modalities for mercenary activities. The system of international norms must be perfected to counter the development of new criminal methods.

46. Greater rigour and precision must be achieved in concepts and definitions, avoiding generalizations and ensuring clear legal regulations; private activity in the area of security and military advice and assistance should be monitored by a specialized public international institution.

47. Examples can be found on the contemporary international scene of States debilitated by long-term armed internal conflict and Governments that have serious difficulties in ensuring the maintenance of public order or in guaranteeing the security of their citizens. No matter how serious the situation they face, those States cannot renounce their fundamental responsibilities and transfer them to private entities. The international community cannot allow either the formation of private armies or the privatization of war. By definition, private companies seek the greatest possible profit and their interests are very different from the State's. Instead, the international community should offer support and cooperation to enable States to form professional armies and security forces trained in both technical areas and in respect for the rules of international humanitarian law and human rights.

48. Consequently, clear legal norms are required which specify the areas in which private military and security companies can legitimately operate and those in which their intervention should be prohibited. Such regulations should be established at the national, regional and international levels. Domestic legislation should take into account the particular situation of each country and respect the principles of the free market and free enterprise, without going to the extreme of considering, in the name of globalization, everything to be legitimate and permitted. It should also respect the

principles of State sovereignty, self-determination of peoples and non-intervention in the internal affairs of States.

49. The Special Rapporteur proposes that the activities of military and security companies should be regulated, limiting their activities in this field to areas that are not inherent to the very existence of States, while not actually prohibiting the existence of such companies. Any law or regulatory mechanism must prohibit the hiring and formation of armed units composed of mercenaries.

50. At the same time, and in addition to regulations at the national level, the international community should attempt to strengthen regional security mechanisms. Such arrangements are preferable because they are regulated by clear legal provisions, act in accordance with a transparent line of command and are fully responsible for any violations of international humanitarian law or human rights. They are also familiar with the territory and the peoples where they operate. It is possible that the interests of private companies, which are motivated primarily by profit, could run counter to peace and democracy and could more likely be oriented towards the perpetuation and even escalation of conflicts.

51. Allowing the formation of private armies, the privatization of war or the establishment of paramilitary groups made up of mercenaries will only mean leaving civilian populations without protection and with little or no chance for peace and democracy, hence opening the way to domination and discrimination.

V. Current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

52. Although the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted by the General Assembly in its resolution 44/34 of 4 December 1989, nearly 11 years ago, it has still not entered into force. Nevertheless, 20 States have either ratified or acceded to it. This means that it requires ratification or accession by only two more States to enter into force. That fact is important in itself, since it would give

mankind yet another international instrument for the protection of human rights.

53. However, despite the objections to article 1 and other articles, the Special Rapporteur believes that it would be easier to improve this important instrument if it were to enter into force in the near future. Therefore, its early entry into force should be encouraged.

54. The early entry into force of the International Convention could be the starting point in efforts to address recent mercenary activities that have remained unpunished. It would expand international regulation of the question and confirm the legal nature of the resolutions and declarations of United Nations bodies condemning mercenary activities. It would facilitate preventive cooperation among States, better identification of situations involving mercenaries and the clear determination of jurisdiction in each case and will facilitate procedures for the extradition of mercenaries and the effective prosecution and punishment of offenders.

55. As noted above, 20 States have completed the formal process of expressing their willingness to be bound by the International Convention. Those States are: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. Nine other States have signed the International Convention, but have not yet ratified it. They are: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania and Yugoslavia.

VI. Conclusions

56. No significant progress has been observed in cutting down the number of mercenary activities, which are carried out in particular through armed conflicts where some or all of the parties hire mercenaries to boost their military might and capacity to do damage.

57. The Special Rapporteur's mandate includes the follow-up to his visit to Cuba in 1999 to investigate the mercenary attacks on Cuba in 1997. The persons and entities outside Cuba that participated in the planning, preparation, cover-up and financing of the attacks have yet to be prosecuted and punished in their countries of residence.

58. Various African countries continue to be affected by armed conflicts involving mercenaries. The interests of third parties, particularly their desire to control the valuable natural resources of African countries, are the causes of instability and armed conflicts in which mercenaries are used.

59. The limitations and shortcomings of the legal definition of mercenaries have been underscored by the fact that the number of mercenary activities has not diminished and that international efforts to prevent and prosecute such activities have been inadequate. The international community needs to urgently focus on drafting a more effective definition.

60. In view of the persistence of mercenary activities, the General Assembly should continue to condemn these wrongful acts because they impede the exercise of the right of peoples to self-determination, undermine the sovereignty of States and the principle of non-interference in internal affairs, impede the enjoyment of the human rights of the victims of such aggression and destabilize legitimate constitutional Governments.

61. The methods used to recruit mercenaries by private companies that offer security services and military assistance and advice in the international market should continue to be kept under review. Not all private companies recruit mercenaries, but the novelty of the offer, the efficiency promised in situations that used to be exclusively reserved for State action, and the fact that such companies are at the same time multifaceted, versatile and technologically well equipped, could well draw them into intervening directly in armed conflicts of the countries with which they have signed contracts. The temptation, under such a scenario, of recruiting mercenaries to carry out such interventions is an inescapable reality.

62. The available data indicate that, as a result of the activities of such companies, the supply of mercenaries has increased. However, the prevailing view does not favour allowing the play of market forces to determine the demand and supply of mercenaries; rather, it appears to support the idea that companies that offer military security services on the international market should be regulated and monitored by the international community in order to prohibit the hiring of mercenaries to fight in armed conflicts.

63. Nearly 11 years have passed since the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of

Mercenaries, yet only 20 States have so far agreed to be bound by it. Ratification of the Convention by only two more States is needed to meet the requirement for its entry into force.

VII. Recommendations

64. In view of the continuation of mercenary activities in various areas of ongoing armed conflict in African countries, together with the variety of forms used without changing the mercenary nature of the interventions, and the fact that, in addition to the profit motive, the presence of mercenaries and their paymasters is primarily intended to either control policy or play a dominant political role that guarantees access to Africa's natural resources, especially diamonds and oil, the General Assembly should, in addition to condemning mercenary activities, declare its willingness to strengthen all those national, regional and international mechanisms that could be used to put an end to the presence of mercenaries in Africa. The Assembly should also call for the establishment of a system to provide special protection for Africa's natural resources.

65. It is recommended that, in view of the problems involved in coming up with a legal definition of mercenaries and a lack of legislation providing for the definition, prevention and punishment of mercenary activities, the General Assembly should reiterate that priority should be given to convening the meetings of experts and other mechanisms it has already provided for to consider and make proposals on the subject so that, in coordination with the Special Rapporteur, suggestions and proposals concerning the legal definition of mercenaries, amendments to international instruments on the subject and studies on the extent and regulation of the private offer of military security services on the international market may be made available as soon as possible.

66. In that regard, the General Assembly should recall that its previous resolutions with respect to publicizing, including through pamphlets, the adverse effects of the activities of mercenaries on the enjoyment of human rights and on the right to self-determination have not yet been implemented.

67. In view of the tragic experience of Cuba as a result of the attacks perpetrated against it in 1997 by mercenaries recruited, trained, financed and directed

from outside Cuba, and the experiences of other countries that have also been victims of mercenary attacks prepared and directed from abroad, the General Assembly should remind all Member States that their territories may not be used to recruit or train mercenaries or to finance mercenary operations to be implemented later in other countries, resulting in the loss of life, damage to facilities and disruption of security in general; that States are under the obligation to prohibit, prosecute and punish all mercenary activities and investigate, punish or extradite, if necessary, perpetrators or masterminds of mercenary attacks who seek refuge in the territory of a country other than the affected country.

68. Lastly, the General Assembly should encourage its Member States to accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries in order for it to come into force as soon as possible.



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**Human rights questions: human rights situations and
reports of special rapporteurs and representatives**

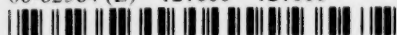
Situation of human rights in Haiti

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report, accompanied by recommendations, on the situation of human rights in Haiti, prepared by Mr. Adama Dieng, independent expert, in accordance with Economic and Social Council decision 2000/277 dated 28 July 2000.

* A/55/150 and Corr.1-3.

** In accordance with General Assembly resolution 54/248, sect. C, para. 1, this report is being submitted on 28 August 2000 so as to include as much updated information as possible.



Report of the independent expert of the Commission on Human Rights on the situation of human rights in Haiti

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I. Introduction

1. At its fifty-sixth session, the Commission on Human Rights, through its resolution 2000/78, endorsed by Economic and Social decision 2000/277, invited the independent expert to report to the General Assembly at its fifty-fifth session and to the Commission at its fifty-seventh session on developments in the human rights situation in Haiti. In implementation of that resolution, the independent expert carried out a mission to Haiti from 27 July to 8 August 2000.

2. During his visit to Haiti, he met with a large number of politicians and members of civil society. The many public figures with whom he met included René Préal, President of the Republic; Jacques Edouard Alexis, Prime Minister; Jean-Bertrand Aristide, former President of the Republic and leader of the Mouvement Fanmi Lavalas; Mirlande Manigat, Senate candidate and party representative; Fritz Longchamp, Minister for Foreign Affairs; Camille Leblanc, Minister of Justice; Gérard Pierre Charles, leader of the Organisation du peuple en lutte (OPL); Paul Antoine Bien-Aimé, Minister of National Education; Evans Paul, President of the Espace de concertation; Mouvement catholique pour une nouvelle Haiti (MOCHRENA) leaders; Hubert De Roncay, leader of the Mouvement patriotique pour le sauvetage national (MPSN); Renaud Bernardin of the Parti Louvri Baryè (PLB); members of the Provisional Electoral Council and members of the judiciary. The independent expert wishes to express his gratitude for their constructive cooperation.

3. He also had highly productive meetings with Alfredo Lopes Cabral, the Representative of the Secretary-General; the Chargé d'affaires of the Embassy of Venezuela; the Deputy Resident Representative of the United Nations Development Programme (UNDP); the representative of the United Nations Food and Agriculture Organization (FAO) and acting resident coordinator; and representatives of various civil society associations, including the Syndicat d'enseignants; non-governmental human rights organizations; and women's organizations. The expert held working meetings with several International Civilian Support Mission in Haiti (MICAH) staff members and interviewed Haitian men and women of various social classes.

4. In this report, the independent expert is endeavouring to present a detailed analysis of the human rights situation in Haiti and to make a number of recommendations; the implementation of some of them will require the combined efforts of the Haitian authorities and the international community. It should be explained that the independent expert's mission took place at a time of tension between Haiti and the international community as a result of the manner in which the elections of 21 May 2000 were conducted and, more specifically, of the method of calculation used in the senatorial election.

5. On the day before the independent expert's arrival in Port-au-Prince, a grenade had exploded at the residence of the Canadian Ambassador to Haiti; however, there were no victims. The Canadian diplomat and his wife were absent when the grenade was thrown by unknown assailants. That same day (Thursday, 27 July 2000), the police had found a similar grenade in front of the former office of the International Civilian Mission in Haiti (MICIVIH). This tension appeared to be exacerbated by the threat of sanctions, including an embargo against Haiti. According to newspaper articles, President Préval had warned that Haitians would have to tighten their belts if the international community imposed sanctions on Haiti. This assertion reportedly spurred discussion on the radio, in the press and even in the street.

6. It is true that certain statements made by foreign diplomats were an affront to the self-respect and patriotism of some Haitian men and women. For those familiar with Haitian history, it is hardly surprising that the affair of the so-called embargo split the country into two camps. This climate, which also involved often-bitter exchanges between some of the opposition parties and Fanmi Lavalas, should be relaxed in the interests of the Haitian people.

7. Daily violence, including holdups, murders, fatal woundings and burglaries, form a background for this verbal political violence. This dark picture is worsened by the abject poverty of the poorest classes, who have suffered so much and who continue to face problems of access to drinking water, health care, housing, education and, last but not least, the justice system, the law — in short, legal services. These people should be the first concern of all parties involved including the international community.

8. This report, which the independent expert hereby submits to the General Assembly, examines the social and political context, the judicial system, the Haitian National Police, international cooperation, the right to education, the right to development in rural areas, women's rights and the prison issue; lastly, it pays tribute to the journalist and human rights advocate, Jean Dominique.

II. Social and political context

9. Since President Préval dissolved Parliament on 11 January 1999, he has governed virtually by decree. It is true that efforts have been made to hold elections by setting up a Provisional Electoral Council (CEP). This nine-member body was instructed to organize elections to fill the seats in the Senate, the Chamber of Deputies, the governing boards of the *sections communales*, the municipal councils, the assemblies of the *sections communales*, the municipal and departmental assemblies, the departmental councils and the interdepartmental council. Has the CEP been able to maintain painstakingly its credibility, objectivity and impartiality so that elections can be held in accordance with the principles of democratic pluralism?

10. To judge by the controversy that followed the 21 May 2000 elections, nothing is less certain. However, that conclusion should be nuanced. According to the statements and reports of various observers, the elections were held under optimal conditions of transparency and freedom with a rather high rate of participation in comparison with other elections held since 1990. There were virtually no cases of police misconduct; no police officer was accused of preventing citizens from fulfilling their electoral duty. Some even claimed that the police had compensated for the failings of the CEP since, in some areas without electricity, the votes were tallied on police premises without any interference.

11. It is true that this situation led to complaints that the police had been politicized and even to accusations of illegal police interference. In the expert's opinion, the conclusion reached by many observers was somewhat hasty. On the evening of 21 May, none of the observer missions had occasion to report the occurrence of large-scale fraud of such a nature as to affect the validity of the elections. Later, the opposition accused the Lavalas Government of using armed commando units and the National Police to violate the

right of citizens to vote. They reported that ballot boxes had been stolen or replaced by other, previously-filled ones; that people had been intimidated with weapons but there had been no bloodshed; that votes had been counted without proxy supervision; that false documentation had been submitted; that ballots had been cancelled; and that candidates had been terrorized or detained.

12. This situation leads the expert to point out that election monitoring is not limited to election day; it must at least cover the period from the electoral campaign to the announcement of the provisional results. In any case, Ambassador Orlando Marville, head of the Organization of American States (OAS) technical mission, ultimately challenged the method of calculating senatorial seats used by the CEP. Since then, the controversy has focused on this arithmetical issue, which is of major importance in meeting the requirements of universal suffrage. The CEP nevertheless decided that its interpretation should prevail, supporting its position by referring to the method of calculating percentages used and accepted in the 1990, 1995 and 1997 elections.

13. It therefore proclaimed the final results, which gave the majority of seats to the Fanmi Lavalas party. The opposition unanimously rejected these results and the OAS Electoral Observation Mission continued to maintain that the method of calculation used by the CEP for the senatorial elections was not in accordance with the Electoral Law. While acknowledging that the OAS position is well-founded, the expert recognizes the difficulty faced by CEP members in calculating the majority in the case of an election to fill one seat in a department where two or even three senatorial seats were to be filled.

14. They took the view that this method of calculation, which would invalidate the first-round election of a candidate for whom the entire electorate had voted, would reveal a certain weakness in the Electoral Law in cases where there was more than one vacant seat per department to be filled. In order to reduce to a minimum the bias resulting from ballot box stuffing, they decided, in the case of elections to two seats in one department, to calculate the total number of votes obtained by the four candidates with the largest number of votes, divide the total by two and determine whether any of the candidates had enough votes to constitute a majority on the basis of this calculation. Citing the 1990 and 1995 elections (in

which none of the candidates had objected to the use of that method) as a precedent, the CEP decided that the "50 per cent plus one" rule for a first-round victory, established in the Electoral Law as applicable to the election of deputies, did not apply where there was more than one senatorial seat to be filled in a department.

15. The expert considers that the CEP did not fully apply articles 53 and 64 of the Electoral Law of 19 July 1999. The CEP "decision" was based more on equity than on law. Furthermore, it is clear from the CEP explanatory statement dated 30 June 2000 that "the CEP, as the sole authority vested with the power to apply the Electoral Law, made a good-faith effort to find a method corresponding as closely as possible to the spirit of the law". An appeals body, had one existed, would probably have reversed the CEP "decision" on the grounds that it was in violation of the Law. Nevertheless, it is unfortunate that the OAS position was announced publicly even before the CEP received the letter sent to it by Mr. Marville, the OAS mission head in Haiti.

16. Fortunately, by its resolution dated 4 August 2000, the Permanent Council of OAS decided to accept the invitation of the Haitian Government and to send to Haiti a mission led by the Secretary-General of OAS, on which the Group of Friends of the United Nations Secretary-General would be represented, to identify, together with the Haitian Government and other sectors of the political community and civil society, options and recommendations for resolving, as expeditiously as possible, difficulties such as those that had arisen from differing interpretations of the Election Law, and for further strengthening democracy in Haiti.

17. It is to be hoped that all parties concerned will support the success of this OAS mission. However, the most important thing is for all of them to realize that what unites them is far more important than what separates them. In that regard, the expert cannot but associate himself with the statement made by Micha Gaillard, an Espace de concertation candidate:

It is the capacity of the members of our political, economic, social and moral elite to transcend their own interests that will allow us to achieve together for Haiti what each of us seems individually to desire: a chance to hope and struggle for a country worth living in. In order to achieve that goal, we must change our

exclusionary, combative values, attitudes and behaviour into values, attitudes and behaviour characterized by inclusion, solidarity, tolerance and understanding between groups and individuals.

This raises the whole issue of a culture of democracy, the lack of which must be remedied in Haiti in order to restore to its people their full dignity.

III. The National Police and politicization

18. In November 1999, we appealed for moderation on the part of all political actors. We also expressed the hope that all actors would help to create the conditions that would allow the electoral process to continue normally towards free, democratic and transparent elections with the broadest possible participation by the Haitian people. Our appeal was not in vain, as several parties agreed to sign a code of ethics drawn up by the Provisional Electoral Council (CEP) on 4 January 2000, which requested the parties and candidates to refrain from spreading views or encouraging actions that might endanger sovereignty, public order, integrity or security in the country. In the light of the testimony gathered during his visit, the expert is in a position to state that the principles set forth in the code have not been scrupulously observed. The litany of alleged violations of the code, in particular, and of other laws and regulations in general, would take some time to recite.

19. It will be sufficient to report on the fire set on the premises of the Espace de concertation, whose perpetrators appear to be shielded from any prosecution. Another flagrant case took place two days after the election, on 23 May 2000, when Paul Denis, a Senate candidate for the department of the South, and four other OPL members, were arrested at his home in the town of Cayes by members of the Rapid Intervention and Law Enforcement Unit of the National Police (GIPN). These arrests, which were not the result of a crime, were made without a warrant.

20. From the town of Cayes they were taken to Port-au-Prince to be held at the police station at Pétion-Ville, without being brought before a judge. The next day, their attorneys, from the Malary firm, submitted a request to the justice of the peace of Pétion-Ville to visit the Police Station at Pétion-Ville in order to verify

that they were being held at that location, receive the detention order from the officers in charge at the station, and gather any information on the reasons for their detention and the place and date of their arrest. In response to this request, the justice of the peace made a report which revealed that he had not been able to see the detention list, that members of the Intervention Unit arranged to have a warrant issued by the government commissioner of Cayes after they had made the arrests, and that the warrant, which had been given to Paul Denis, had been confiscated from him at the Pétion-Ville jail.

21. The warrant stated in substance that the Haitian National Police was authorized to search in any houses where they suspected that illegal weapons were being stockpiled, to arrest violators and to bring them to a secure location, given the dilapidated conditions at the Civil Prison, in order to ensure a peaceful atmosphere in the department of the South. The only weapon found at the home of Paul Denis is a pistol for which he has the proper permit. However, this permit was confiscated by the police. The attorneys requested from the presiding judge of the Court of First Instance in Port-au-Prince authorization to meet with the government commissioner of Port-au-Prince on a specific date in order to have the arrest and detention of Paul Denis and his companions declared illegal and arbitrary and have their immediate release ordered.

22. The order drawn up and issued by the presiding judge of the Tribunal indicates that no file, complaint, report or warrant exists in writing from an official with jurisdiction and that they had been detained beyond the 48-hour time limit without being brought before a judge. For those reasons, the presiding judge of the Tribunal ruled that the detention of Paul Denis and the others was illegal and ordered their immediate release. They will be released after being returned to Cayes. Curiously, the government commissioner of Cayes then requested their release from the National Police officer in charge, on the condition that they would answer any summons from the courts.

23. Another example that reinforces the tendency towards politicization of the police is the case of the incidents which occurred at Maïssade on 11 and 12 July 2000, and which allegedly included illegal arrest and detention, maltreatment and destruction of property. These events were the subject of an investigation conducted by advisers to MICAH (Human Rights section). Their investigation showed

that the Maïssade incidents were the work of members of the Espace de concertation and members of Fanmi Lavalas. They also injured persons and damaged houses. The investigators noted that searches and arrests made on the basis of information provided by members of Fanmi Lavalas were directed only at members of the Espace de concertation. No homes of members of Fanmi Lavalas were searched. The police did not even question, much less arrest, the individuals implicated in the attacks carried out on the afternoon of 12 July. Furthermore, despite the insistence by the police that the justice of the peace had been present during the searches, the justice of the peace himself stressed that he was present only during four searches and one arrest.

24. Only five members of the Espace de concertation had been arrested in a very forceful manner, although they were not subjected to ill-treatment after their arrest. Two days later, they were placed under a committal order, and 10 days later, one of them was granted provisional release. As one may imagine, no representative of the parties involved in the dispute has accepted any responsibility at all for the incidents, each claiming that the other was responsible. However, it is appropriate to note that the allegations made by the Espace de concertation were exaggerated, particularly the accusation of kidnapping.

25. An issue involving freedom of association and expression is the refusal by the police to authorize a demonstration at Lascahobas planned for 6 July 2000, on the initiative of the opposition, which intended to denounce the allegations of fraud during the elections. What remains puzzling is that the police and the government commissioner gave different versions of the decision to prohibit the demonstration. The former maintains that the three-day notice required under the law had not been observed by the representatives of the opposition, while the latter cited security reasons. These circumstances make it appear that only Lavalas supporters are authorized to express their opinions and hold demonstrations. It is regrettable that no official inquiry has been conducted to date. The same is true for the complaint of death threats made by the leader of the Espace de concertation against a member of Fanmi Lavalas, supported by a video cassette. Curiously, the government commissioner at Port-au-Prince, when questioned by the expert, stated that he had not received such a complaint. The expert not only

condemns these violations of the law, but vigorously denounces the impunity which seems to apply to them.

26. The day after his meeting with the President of the Senate of the Republic, the expert received from him a press release reporting the intrusion of heavily-armed men into the Senate chamber. He confirmed that it was a group of candidates from the Parti Fanmi Lavalas for the last legislative elections who had entered the building accompanied by a group of heavily-armed civilians. It would appear that members of the Rapid Intervention and Law Enforcement Unit (CIMO) of the National Police had been in the neighbourhood. Even though it may well have been a visit to become familiar with the premises (they were accompanied by a sitting Senator), the expert is of the view that a deployment of that size cannot be justified. It can only serve to exacerbate the tension prevailing in the country.

27. Another matter of concern to the expert is allegations of torture directed against officers of the Haitian National Police. Acts of violence were committed against Marie Carmen Moïse, who was beaten and severely burned on the arms and other parts of the body with an electric iron. Her attackers were allegedly police officers, who demanded \$200,000 and cocaine. Mrs. Carmen Moïse is a journalist and editor of a magazine in Miami. A complaint was lodged, and the expert invites the judicial authorities to make every effort to shed light on this matter and punish the perpetrators.

28. The independent expert strongly hopes that the activities of several non-governmental human rights organizations in monitoring the holding of the elections, as well as their very laudable activities in the area of civic education, will help to increase the transparency and freedom of future elections. Therefore, he appeals to the international community to support capacity-building in civil society.

IV. Constitutional problems or lack of a culture of democracy

29. From the outset, the expert wishes to state his conviction that Haiti suffers from an enormous lack of a culture of democracy, which must be reduced if democracy is truly to be strengthened and political stability ensured in this country, which seems to have gone from one crisis to another since the restoration of

democracy. Is this related to the "perfection" of the 1987 Constitution or rather to the behaviour of the actors in political life? Perhaps both of them together. Therefore, the opinion expressed by the trained historian, Claude Moïse, seems relevant:

There is no perfect constitution. When in drafting a constitution one aims at perfection, in attempting to account for everything by multiplying the checks and balances and the prohibitions, there is a risk of stifling life and hindering the democratization process itself. The establishment of independent local and regional institutions, decentralization of powers and periodic popular elections certainly represent the necessary conditions for the establishment of democracy. That is one of the strengths of the 1987 Constitution. But it is not in and of itself democracy, as its liberal predecessors could not have been. In order for it to live and function, it must be recognized and accepted by the social and political actors, and their respective organizations must work to make it dynamic and respected ... The Haitian people have always been deprived of power, and have often shown that they rejected traditional power. They must still prove that they want to take hold of the powers within their grasp in order to establish a State based on the rule of law, a regime of liberty and justice. (in *Constitutions et Luites de pouvoir en Haiti*, 1990 Editions CIDIHCA.)

30. Five years later, in her *Plaisoyer pour une nouvelle constitution* (The Case for a New Constitution) published by the Centre humanisme démocratique en action, Professor Mirlande H. Manigat addressed the question by taking another path:

Bowing to the ease but also the logic of hindsight, it is clear that in 1987 it would have been preferable to use one of our former Constitutions for the time being, which, by the way, had been suggested, shorten the term of the National Governing Council, hold elections for new leaders and give the Chambers, freed from the twin constraints of haste and impatience, the responsibility for drafting a constitution. This was not done because the nation as a whole had succumbed to a classic temptation which it could not resist, namely, to reject the burdens of a past which is blamed for all our ills, with as a corollary, the irresistible attraction of novelty and

imagination, both of which bring with them the will to change and change itself. The mass approval of the Constitution was more an exercise in collective self-satisfaction than an act of legal evaluation, for, all in all, outside the confines of the Constituent Assembly, there was no true open discussion on its essential provisions, and a consensus suffused with joyful lightheartedness quickly formed that the Constitution was good simply because it was new.

31. She is quite right in stating that an excessive desire for innovation posed the risk of suffocating society rather than curing it. Should the Constitution be blamed? Should we believe that Haiti is incapable of holding elections without disputes and rejection of the results from the ballot box? Are political leaders capable of political tolerance? These are questions being asked by observers of Haitian political life. There had been so much hope that Haiti would finally emerge from its crises in the aftermath of the elections of 21 May 2000. This hope on the part of the expert, friends of Haiti, and above all the Haitian men and women who had joined forces over the past few months appears far from being realized. Rather than resolving the political situation, it seems that the election of 21 May 2000 has complicated it. The expert cannot but regret the prevailing atmosphere in Haiti, which is hardly conducive to ensuring the institutional stability essential for meeting the innumerable challenges faced by the Government and the Haitian people. There should be no need to recall that the protection of fundamental rights against abuses by the executive power is one of the essential aspects of the rule of law. This protection will rest mainly on the control that will be exercised over the administration by the courts on the one hand and by the Parliament on the other. What was at stake in the elections of 21 May can easily be understood from the viewpoint of the presidential election planned for November or December.

32. Today, it appears that there is a considerable distance between laws and reality. Haiti played an important role in the drafting and adoption of the Universal Declaration of Human Rights in 1948. The Declaration is part of the preamble to the 1987 Constitution with the same status as the Act of Independence, making human rights the central idea which inspires the rest of the Constitution. It contains a complete set of a good thirty articles devoted to human rights, economic, social and cultural as well as civil

and political. Of course, the 1987 Constitution is not innovative, for since 1843 Haiti has affirmed these rights of its citizens: liberty, security, principles concerning habeas corpus, procedures governing arrest, and so forth. All the Constitutions which followed have reaffirmed them.

33. Nevertheless, the tumultuous political history of Haiti has always been marked by unrest, assassination, arbitrary arrest, and cruel, inhuman or degrading treatment. It should be pointed out that even the Duvalierist Constitutions recognized and guaranteed human rights. What was original about the 1987 Constitution was that it was the first to raise great hope among all levels of society, or to quote Mirlande Manigat, "it was the moment where hope cauterized past wounds and minimized the risks ...". That said, when one takes stock of the situation it can be said that some clear improvements have resulted, nevertheless.

34. As an illustration, we have only to refer to respect for freedom of expression. There has been a liberation of the word, as one would say: people speak out on television and radio. A practice arose which is commonly called "open channels", where, under cover of anonymity, Haitians could say whatever they wanted on any subject. Newspapers were established. There was a period of euphoria and even a tendency to confuse liberty with licence. Today, out of the six "open channel" programmes, only two remain. Certainly, freedom of expression exists, but self-censorship seems to be developing.

35. Some journalists seem to be afraid to express themselves freely because of threats from unknown persons. The murder of the famous journalist Jean Dominique, even though he was close to President Préval, whose perpetrators are still at large, has heightened their fear. Serge Gilles, an opposition leader, states from New York that considerable sums (around \$200 million) have been transferred to British banks. Knowing that the reserves of the Central Bank of Haiti are well below that amount, it is surprising that not only have no Haitian media reported that information, they have not even investigated the matter with the Governor of the Central Bank or the Minister of Finance.

V. The judicial system and impunity

36. The Haitian people have commemorated the sixth anniversary of the Raboteau massacre perpetrated on 22 April 1994. Six years on, the families and friends of the victims of this massacre can at last see appearing on the horizon the commencement of the Raboteau trial, which is scheduled for 12 September 2000. Six years of bitter struggle to tell the whole world that the Haitian people will never again accept the reign of impunity. The expert has followed all the twists and turns of this case and commends the diligence with which the judicial authorities have handled it since it left the Investigation Chamber. The accused have exercised their right of appeal before the Court of Appeal and the Supreme Court.

37. Before his departure from Port-au-Prince, the expert was informed of the submission of a new appeal by one of the accused, who is contesting the competence of the court to which he has been sent for trial. It is to be hoped that this appeal will not again call into question the date of the trial, but it is important that the appeal should be considered, not only swiftly, but also in compliance with the standards required for a just and fair trial. There have been other massacres too, including the Jean-Rabel massacre of 23 July 1987, which cost the lives of more than 200 peasants; the Piatre massacre of 12 March 1990, in which 11 persons died and 300 houses and cabins were burned down; and the Gervais massacre, in which 1,000 homes were destroyed.

38. Currently, the Haitian Government is endeavouring to shed light on these events, as demonstrated by the establishment on 23 July 1999 by the Minister of Justice of a judicial commission charged with supervising the investigations into these massacres. In the case of the Piatre massacre, 400 persons have already given evidence, which is remarkable, given that the large landowners in the Artibonite department have an iron grip on the government commissioners and other investigating magistrates. There is a need to ensure that the commission's work is brought to completion. There is a police laboratory capable of performing ballistic analysis, which is enhancing the quality of the investigations.

39. The Piatre case is of capital importance in that it is the tragic outcome of a dispute concerning 100 *carreaux* of land occupied by Olivier Nadal (President

of the Chamber of Commerce and Industry in Haiti), who already "owned" a 900-*carreaux* estate in the same area. The peasants of the village of Piatre sued Mr. Nadal unsuccessfully in the court in St-Marc. Thus it was that when the fall of the *de facto* president Prosper Avril was announced, on 11 March 1990, they returned to this land. The section chief and his deputy organized a crackdown against them, resulting in the death of a peasant by the name of Samuel Saintfacile. In retaliation at the failure of the judicial authorities and the police to act, the people lynched the section chief and his deputy. The following day, on 12 March 1990, a detachment of 30 soldiers backed by armed civilians from St-Marc perpetrated the Piatre massacre. (See *Haiti-Progrès*, vol. 17, No. 52.)

40. The expert shares the view of the Fondation Jean-Marie Vincent that, until the poor peasants strengthen their organizations they will never obtain justice. He therefore recommends the establishment of legal services in rural areas in order to better assist the peasants in organizing by availing themselves of the law. As to the trial in the so-called "Carrefour Feuilles" case, involving the summary execution of 11 persons, it is scheduled to begin some time in August 2000. Of the dozen or so police officers arrested, five have been released. In fact, after a confrontation with the witnesses and the other accused parties, it was established that they had not even been at the scene of the incident.

VI. Judicial reform: speeding up the process

41. Laudable though these efforts are, they could be wrecked by the sorry state of the judicial system. In his previous reports, the expert has always emphasized the pressing need to provide the Judges School with a statute and to establish a Superior Council of the Judiciary. During his most recent visit, he commended the efforts of the Minister of Justice, who had just transmitted to the Prime Minister several bills that are to be the subject of a debate with civil society in September 2000 with a view to achieving a broad consensus. The expert considers that this dialogue with civil society actors may help to prevent the Parliament from distorting the philosophy underlying the texts, which are to be presented to it for consideration and adoption.

42. These texts concern, *inter alia*, the Superior Council of the Judiciary, which will in future be responsible for supervising judges and for their career development, with a monitoring system that will enable it to track judges' development and recommend promotions or disciplinary measures. The establishment of the Council will allow the Ministry of Justice to play a more decisive role in the development of standards, becoming a kind of Ministry of Law.

43. The statute of the Judges School should make it possible to create a corps of apolitical and independent judges — this, at least, is the philosophy underlying the project. In fact, the aim is to arrive, within the next 10 years, at the point where all judges are graduates of the School, having been admitted to it solely through a competitive examination. To date, the Haitians nominated by the Assemblies to serve as justices of the peace have been close to the authorities politically. One of the safeguards provided for in the project is that in future the Assemblies will no longer be able to nominate candidates for the posts of justices of the peace unless they have graduated from the School.

44. Likewise, the establishment of the Inspectorate General of the Ministry of Justice, subject to the text's approval by Parliament, should make it possible to identify the system's weaknesses systematically and with complete independence and to take the necessary corrective action. The Inspectorate General will be able to recommend any measure that is both appropriate and conforms to the fundamental principles relating to the independence of the judiciary.

45. The draft code of criminal procedure has not been finalized and is to be the subject of a dialogue with civil society, including the lawyers' association and non-governmental human rights organizations. Such interaction will undoubtedly encourage civil society actors to take over this project in order to better defend it after contributing their expertise and experience. A text on ethics and another on money-laundering are being finalized, as well as a large number of bills and decrees on the ratification of several treaties, including international human rights instruments.

VII. The documents of the military and paramilitary forces

46. The refusal of the United States authorities to return all the materials and the approximately 160,000

pages (this figure is disputed by the Americans) of documents of the Haitian Armed Forces and the Front révolutionnaire pour l'avancement et le progrès en Haïti (FRAPH) confiscated from the offices of the military and paramilitary forces continues to mobilize Haitian non-governmental human rights organizations with the support of foreign organizations such as Human Rights Watch and Amnesty International. United States Secretary of State Madeleine Albright stated on 4 April 1998:

All the documents have been returned to Haiti and offered to the Haitian Government. The Haitian authorities have been invited to examine the documents in their entirety and to take them from the American embassy to be guarded by the Haitian Government. So I think that the United States has been very cooperative in this matter.

47. The view expressed by the Democrat John Conyers, Jr., chairman of a bi-partisan congressional delegation that visited Haiti from 10 to 12 September 1999, echoes the expert's words in the General Assembly in November 1998. The honourable member of Congress said:

A study undertaken by the American Law Division of the Congressional Research Service concluded that the documents are the property of the Haitian Government and that their seizure clearly violated the spirit, if not the letter, of the mandate of the Multinational Force. The claims of the Department of Defence and other branches of the United States Government that the documents should be amended in order to comply with the Privacy Act are simply without foundation. The documents must be returned intact.

48. As the expert stated in the Commission on Human Rights on 19 April 2000, he is not motivated by any hostility towards the United States Administration. It is simply that he has too much respect for United States efforts in the field of human rights to remain silent on a case that runs counter to his beliefs as a human rights defender. This is the only reason for his persistence over the years in raising this matter in the General Assembly, particularly on account of its central importance in the fight against impunity. Some have implied that the United States may be concerned that the documents contain information regarding the possible involvement of United States citizens in

human rights violations. Allow the expert to urge you, for the last time, to realize what is at stake in this regard for many victims of the coup d'état and to invite the United States to settle this matter once and for all by returning the documentation in its entirety.

VIII. Dysfunction of the criminal justice system

49. The weakness of the Haitian judicial system, which is manifested in the dysfunction of the criminal justice system, the lack of independence of judges and government commissioners and the difficulty of gaining access to the courts, continues to arouse frustration, not only among the people, but also among donors. By way of a reminder, the expert had expressed concern at the failure of the government commissioners to implement orders for the provisional release of detainees issued by judges, particularly in sensitive cases, not to say those with a political connotation. This attitude, which is detrimental to the rule of law, has resulted in a burgeoning number of cases of arbitrary detention.

50. There are in addition the cases of illegal detention for debt or witchcraft, failure to respect judicial procedures because of ignorance or corruption on the part of judges, and denial of justice. It is therefore not surprising that the prison population numbers 4,000, compared with 1,500 five years ago. The National Penitentiary in Port-au-Prince alone houses more than 50 per cent of the prison population. To be more specific, as of 2 August 2000 there were 2,178 detainees in the National Penitentiary, of whom only 220 had been convicted; the remainder, that is 1,958 persons, were being held in pre-trial detention. The cases of most of those being held in pre-trial detention are affected by serious judicial irregularities.

51. It must be also pointed out that the efforts made to improve detention conditions have been gravely undermined by the substantial reduction in the support that the international community had provided until now to this nerve centre of the criminal justice system. The dysfunction of the judicial system also led to the death in detention on 9 February 2000 of Claude Raymond, a former general in the Haitian Armed Forces, who had been detained since 1996, although several orders had been issued for his release. While his death was the result of a serious illness, the expert

cannot but deplore that this happened, whereas he should have died a free man.

52. It must be recalled that, on 22 July 1999, the Deputy Executive Director of MICIVIH had discussed with the Minister of Justice the case of Claude Raymond and those of some 20 other people, all of whom were being detained in Port-au-Prince despite the fact that orders had been issued for their release. Nine of them had spent more than three years in pre-trial detention. In order to remedy this situation, the Minister of Justice had taken measures, including disciplinary action against certain government commissioners. It is in this context that the government commissioner for Port-au-Prince had been replaced, on a temporary basis, by his deputy, Florence Matthieu. In December 1999, she decided to release those held in detention for prolonged periods. She apparently justified this step on "humanitarian grounds".

53. It must be added that these detainees, most of them former members of the Haitian Armed Forces, were accused of breaches of State security and that, apparently, no judicial proceedings against them had been initiated. Following her decision, Ms. Matthieu was relieved of her duties. Allegations of corruption were reportedly made, but some maintain that her dismissal was in fact a punishment for her bold decision. Whatever the case, this situation again puts the spotlight on the view expressed by the National Commission of Truth and Justice in 1995, a view shared by the independent expert, that:

The role of the commissioner must be reviewed in the light of one of the first objectives of the Commission, namely, the elimination of all political interference in the exercise of judicial power ... depending on the personality of the commissioner, he or she may actively intervene in almost all areas. Given the commissioner's status as an agent of the executive, this may lead to interference by the executive branch, or at least give the impression of such interference.

54. The new government commissioner, Wilfried Présent, a member of the first class to graduate from the Judges School (1997-1998), is trying as best as he can to follow the advice of MICIVIH and is striving to ensure respect for international standards. On the eve of his meeting with the expert, he visited the detention centres in Port-au-Prince, in accordance with article 447 of the Code of Criminal Investigation. He was thus

able to identify a significant number of irregularities, which he immediately brought to the attention of the Minister of Justice by a letter dated 1 August 2000.

55. It is clear from his visits that people are being detained for years without appearing before the judicial authority that is supposed to rule on their case; that detainees are continuing to languish in jail notwithstanding judicial decisions such as dismissal orders; and that people are being incarcerated without there being a file on their case, either in the Prosecutor's Office or in the Investigation Chamber. Not without having pointed out the relevant provisions on individual liberty (1987 Constitution, Code of Criminal Investigation, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, American Convention on Human Rights), the government commissioner is intending to take the necessary corrective action in respect of these irregularities and to do so before the reopening of the courts for the next session, provided that the Minister of Justice has no objection. The expert can only encourage such an initiative and is therefore recommending that MICAH should provide every assistance in order to put an end to situations of illegality and arbitrariness. It is regrettable that the Port-au-Prince Prosecutor's Office, which is overwhelmed with cases, is not equipped with computers and photocopiers, not to mention an electricity generator or a service vehicle.

56. Accordingly the expert urged the Government to see that the government commissioner in Port-au-Prince enjoyed the best possible working conditions. It was also imperative to take firm measures against the insubordination of some policemen who tended to forget that the police constitutes the right hand of Justice. Normally, the commissioner should be kept informed of those being kept in custody. Unfortunately, in real life, people are kept in police stations for months without a hearing before a judge.

57. As soon as he learns about such a case, the government commissioner demands that the person concerned be released and immediately brought before a judge. It sometimes happens that an order is issued and the police negotiate with the person with a view to rescinding the order. Sometimes, the police will arrest someone for kidnapping who is later released because his dossier was inadmissible since the police had not taken the pains to notify a justice of the peace to verify the facts of the case. The list of omissions is long; it

includes the lack of forensic medical services; to this day, there is only one forensic physician for the whole of Haiti.

58. Corruption in the judiciary, which the expert noted in his previous reports, continues to be rampant and to block efforts to persuade the Haitian people to become reconciled to the justice system. The phenomenon is thriving as the drug traffic becomes more widespread with the involvement of a number of policemen. It is not surprising that one wing of the National Penitentiary has been christened "the Colombians' quarter" because of the number of inmates being held for drug trafficking. It was reported to the expert that even the farmers were engaged in this criminal activity by collecting the packages containing drugs dropped by planes arriving from Colombia.

59. For the farmers, who are living in extreme poverty, this is a windfall. In 1999, the expert had stressed the danger to the stability of Haiti caused by drug traffickers and the need to support the international community in fighting this scourge. Since then, certain initiatives were taken, including the anti-drug traffic campaign launched by the Haitian National Police with the help of the American Drug Enforcement Agency. However, the recent American decision to suspend aid to the National Police raised fears that the situation would get worse.

60. In recognition of the dominant role of the judicial system in strengthening human rights, it is urgent to take steps to implement the plan of action relating to the legal system. The non-existence of an operational parliament is a major handicap in executing that plan. Still, it is to be hoped that the disputed election will be settled in the interest of the Haitian people and adherence to the law, thus creating a situation favouring discussion and adoption of the projects that would immediately be forthcoming from the executive branch.

61. With regard to legal aid, the Minister of Justice has issued a circular advertising that justice is free. While it was a praiseworthy initiative, the expert thought it should go much farther. Accordingly, he discussed with some of the actors his approach to legal services in rural areas based on using the law as an instrument for economic and social development targeted especially to the most disadvantaged groups and those living in rural areas.

IX. Rural populations and the right to development

62. As applied to the rural population of Haiti, the phrase "legal poverty" is a truism. It is a poverty that reflects the socio-economic conditions prevailing in Haiti, a country which is continuing to suffer from all the evils of underdevelopment. It is true that many of the so-called development strategies initiated in Haiti were based on repression, denial of civil and political rights as well as economic and social rights. That being so, the rural population, in particular the women, have been the most deprived and the right to development, as a human right, is of concern above all to them.

63. But what is the use merely of proclaiming a right unless serious efforts are made to create conditions that will make it possible to exercise that right? Thus, the expert, starting from his conviction that access to equal justice for rich and poor is essential to establish the rule of law, considered it indispensable to provide adequate legal assistance to those who, under threat to their lives, liberty, poverty or reputation, are unable to pay a lawyer.

64. But over and above traditional legal aid, which is generally limited to criminal matters, the expert emphasized the need to help rural people to use common law as an instrument to improve their rights situation. While it is true that the law has been and can be misused or abused for purposes of institutionalizing poverty and privilege, exploitation and inequality, it can also be used properly to establish social justice and equality, participation and autonomy.

65. However, for that to happen, the law should be the expression of the will of the people: the enshrinement of their right to participation in public affairs. Article 21 of the Universal Declaration proclaims the right of everyone to take part in the government of his country, directly or through freely chosen representatives. That universal principle is reaffirmed in article 25 of the International Covenant on Civil and Political Rights. It should also be remembered that the right to development encompasses the principle of autonomy, equal opportunity, participation in development, access to resources, Governments and institutions and finally, assumption of responsibility.

66. The principle of autonomy, when applied to individuals and groups implies their right to organize

individually and collectively to promote their development and to pursue that goal so far as possible by their own means and through their own efforts.

67. Participation in development implies that individuals and communities which are the beneficiaries of development, can organize thanks to their guaranteed right of association in their capacity as producers, workers, consumers and as deprived citizens or communities on the local, national and international levels and that through those associations, they can:

(a) Participate effectively in the decision-making process by formulating and applying local and national development policies and, at the same time, be sure that their needs and aspirations are taken fully into account;

(b) Formulate and undertake economic, social, political and cultural tasks of their choice, and as a result of those policies, improve their quality of life and preserve and develop their own cultures.

68. Consequently, a Haitian strategy devised with respect for human rights and in particular the right to development will be oriented towards autonomous development likely to lead to participation. Still, we must not overlook the fact that concern for justice and respect for human rights works more to the advantage of development focused on rural populations. Have they any chance of knowing their rights? To understand them clearly enough to claim them? Regardless of how much they know about their rights, they often have neither the means nor the resources required to exercise them.

69. To reverse that trend, the concept of the right to development can and should constitute a basis for the adoption of laws and procedures designed to eliminate the conditions of underdevelopment or at least help to overcome the obstacles to development.

70. Two questions arise concerning Haiti: first, how to bridge the enormous gap separating the elite, the middle class, from the vast majority and second, how to help that majority to gain access to the legal resources they need in order to enjoy their rights. Those questions can be answered by the threefold motto: "development, rule of law and legal resources".

71. In the matter of development, the basic requirement is the assistance to be given to the rural masses to enable them to determine their own priorities, identify the obstacles and secure the means

of achieving those goals. In other words, development presupposes that those rural people will take their future into their own hands and that being so, the contribution of the law and lawyers is not only desirable, but indispensable.

72. On the question of the law, Haiti has apparently replicated Western law in the various branches of government. Moreover, this extraverted law is often used to maintain the status quo so that it often proves not to reflect the current society or translate its aspirations. The law is not static; it changes with the society and can facilitate change and progress. From that point of view, the law may be a resource for poor Haitian farmers who need to change their living conditions and for development in general.

73. Legal resources, to quote Clarence Dias, constitute the functional knowledge and competence enabling those working together and in tandem with other groups, to understand the legislative system and to use it effectively to promote their objectives. They generate and strengthen the motivations and incentives for collective action to promote and defend common interests.

74. Convinced of that truth, the expert drew the attention of the members of the legal profession, politicians and leaders of the civil society to the absolute need to collaborate with sociologists, economists, non-governmental development organizations, peoples' organizations and all men of goodwill to find the means of bringing the law down to the level of the rural population, thus enabling them to organize around the law and to enjoy the legal services available to more affluent groups.

75. Through a training programme for para-legals or "barefoot lawyers", the rural population of Haiti can be informed of its rights, shown how to claim them and how to secure them; advised on how to deal with obstruction and difficulties; even on occasion initiate procedures in cases of special importance to their communities; and do their own analyses of their problems in order to promote the necessary legislative reforms.

76. We must not lose sight of the fact that the drafting of legislation is strengthened and clarified by continuous confrontation with social reality. Here, we are tempted to quote Michel Foucault in *Les Mots et les Choses* (The Order of Things):

What we put on things, the internal law, the secret netting which allows them to look at one another, but only through the grate of a look, a glance, a language, and it is only in the white spaces of this pattern of tiny squares that order is there in its full dimension, awaiting in silence the moment when it will be put into words.

77. In the past, a great many laws and regulations directly affecting the rural world were enacted without the participation of the people concerned. The result is that the rural inhabitants are unaware of those laws or are only partially and imperfectly acquainted with them. To stress the importance of knowing the law as a vital element in the process leading to collective self-sufficiency, the independent expert referred to Anisur Rahman, who did research for the International Labour Organization on peoples' organizations in various third world environments using techniques based on participation. To illustrate, he describes the impact of knowing the law on landless peasants in Asia:

As the peasants progressed in analysing their social environment, they gained a deeper understanding of their rights and therefore became aware that they were deprived of them. That awakening led them to take the steps which had the effect first of all of transforming their state of alienation born of ignorance into consciousness that they possessed the power (the right) by virtue of the law and then, into an act exercising that power. The law and the legal knowledge that they acquired were strategic components of consciousness-raising and of mobilizing people. They now had concrete problems on which to focus collective participatory action.

78. There is not the slightest doubt that legal services will have a definite impact on the economic and social development of the rural populations of Haiti. They will now be able to use the legal provisions of benefit to them to neutralize unjust laws and practices; in fact, they will become producers of rights and actors in the life of civil society. The time was no longer distant when knowledge of his rights would enable *homo haitiensis* to substitute for his feelings of alienation, resignation and dependence a new consciousness of his dignity and his rights — a prerequisite for self-sufficiency.

X. Towards a new generation of magistrates

79. The dilapidated state of the judicial system does much to fuel the feeling of impunity that pervades the country. Especially deplorable is the lack of proper training for judges owing to the poor quality of the law schools in the provinces and the insufficient number of teachers. It is therefore encouraging to note that the Minister of Justice plans to train 40 magistrates a year, the aim being to have nothing but graduates of the Judges School from the Peace Tribunal to the Court of Appeals in the next 10 years. For the Supreme Court, the wait will have to be at least 20 years. It should be borne in mind that the Judges School, which is currently much in fashion, is a decisive factor in the resuscitation of justice in Haiti. The Minister of Justice has also decided that the officials of the Attorney-General's office and the justices of the peace have to take the competitive entrance examination for admission to the School. It amounts to a test of ability. There actually appears to be a real desire to remedy the inadequacies, both qualitative and quantitative of the justices of the peace. It is our fervent hope that the Minister will win his wager and that in 2010, most of the magistrates will be cast in the same mould.

80. We must also acknowledge the work accomplished by a commission of inquiry established by the Minister whose report served as basis for the dismissal of magistrates implicated in acts of corruption and embezzlement in the judicial administration. Efforts were made to raise the salary level. For example, a Court of Appeals judge who was earning 6,000 gourdes (\$300) now earns 20,000 gourdes or \$1,000; salaries at the Supreme Court rose from 27,000 gourdes (\$1,350) to 60,000 gourdes or \$3,000. Nevertheless there are still cases of corruption like the one described to the expert by the Minister of Justice. At Marigo, in the south-east of the country, a judge demanded that an individual pay him from the sale of 2 kilos of cocaine. When questioned, he admitted the deed and was forthwith dismissed and prosecuted.

81. Another judge received the sum of \$3,000 from a defendant for nullifying a decision he had already handed down. He was immediately dismissed and his dossier was sent to the Superior Council of the Judiciary with the intent of bringing him up on charges at a later date. The expert wishes to point out that

peace, democracy and development have a price which includes building an independent judicial system accessible to everyone. In that connection, I cannot but deplore once again the delays in implementing the judicial reform process.

XI. Administration of justice

82. On 28 May 1999, the Chamber of Commerce and Industry organized demonstrations in Port-au-Prince to protest against the prevailing insecurity, political violence and anarchy. The demonstrators were subjected to violent attacks by pro-Aristide counter demonstrators. Immediately after the demonstrations, the police carried out an operation in the Carrefour-Feuilles district of the capital, in the course of which 11 persons were killed. A number of policemen were arrested in the wake of these events. The police subsequently reported that the 11 victims were members of armed gangs.

83. It is encouraging to note that the work of the commission (comprised of three judges) appointed by the Minister of Justice to investigate this incident resulted in the identification of the policemen who had carried out these summary executions. According to a report published on 21 March 2000 by Amnesty International, entitled *Haiti: justice and liberties at risk*, the majority of the policemen arrested had already been implicated in murders and, following their arrest, the number of extrajudicial killings carried out by the police had declined. It should be noted that the Office of the Inspector-General of the Haitian National Police (IGPNH) also submitted its report on the Carrefour-Feuilles incident, the conclusions of which have not yet been made public.

84. The IGPNH deserves to be commended for its work. Since the establishment of the Haitian National Police, 635 policemen have been dismissed, 407 of them following investigations carried out by the Office of the Inspector-General and the others by decision of the Office of the Director-General of Police. Still remaining, however, is the question of the judicial proceedings that should be instituted against those policemen accused of human rights violations. According to the quarterly report of MICIVIH, for the period from October to December 1999, of the total number of policemen dismissed, at least 130 of them were dismissed for human rights violations. In 1999 alone, MICIVIH recorded 66 homicides (by accident,

in self-defence or in violation of human rights) involving policemen.

85. The question is whether the remarkable work being done by the ICPNH will suffer from the departure of the Inspector-General, who has resigned his office and now serves in the Permanent Mission of Haiti to the United Nations Office at Geneva. That is very likely since, up to when the expert left Port-au-Prince, his successor had still not been named. Many rumours were circulating about possible changes in the hierarchy of the Haitian National Police. Despite the latter's shortcomings, results have been achieved, even though these have been modest, in view of the prevailing insecurity, particularly in Port-au-Prince. During the week spent in Port-au-Prince alone, the expert noted that there were several cases of murder, fatal blows, injuries, burglaries and other forms of attack against persons and property.

86. This grim picture is compounded by the presence in the National Penitentiary and in the Pétion-Ville prison of a growing number of "deportees", 124 of whom are being held in the National Penitentiary alone. The "deportees" are Haitians who have been tried and convicted in the United States for, inter alia, serious crimes, drug trafficking, hold-ups and rape, and who have completed their sentence. It is no easy matter to achieve the social reintegration of these Haitians, for some of whom this is the first time that they have touched the soil of Haiti.

87. The independent expert is of the view that their detention is illegal and arbitrary and noted that most of the persons with whom he spoke about the matter (including non-governmental organizations that defend human rights, political parties, jurists and ordinary citizens) defended the legitimacy of such a measure, even though it is illegal. In other words, everyone attached greater importance to the aspect of public security. Even though the expert shares the public's concern, the trend is not a very healthy one. The United States and Haiti should together examine this issue very carefully with a view to finding a formula that can preserve respect for the primacy of the law and the security of persons and property.

XII. Establishment of the International Civilian Support Mission in Haiti (MICAH)

88. As you are aware, the United Nations Civilian Police Mission in Haiti (MIPONUH) ended on 15 March 2000. The Mission consisted of a contingent of 140 armed international policemen who were deployed in nine provinces in Haiti. Without a shadow of doubt, their presence has had a real impact on the human rights situation. Not only did they visit detention centres, but they also helped to reinforce the effort to professionalize the recently formed Haitian police force and to reassure the population. The Mission was replaced by the International Civilian Support Mission in Haiti, the focus of whose mandate is to provide support for the reform of the justice system, professionalize the police and promote respect for human rights in Haiti. Unlike their predecessors of MIPONUH, the 150 members of MICAH will be unarmed.

89. MICAH has a budget of \$24 million with the United Nations providing \$9.2 million of the total and the remainder to be funded from voluntary contributions, mainly from the United States and Canada. Like the Secretary-General of the United Nations, the expert fears that MICAH could be withdrawn even before it really begins its task. The Secretary-General also drew the attention of Member States to this matter in a letter dated 31 March 2000 addressed to the President of the General Assembly. He was of the view that without qualified personnel, the mandate which the General Assembly had entrusted to MICAH could not be implemented. In his letter, the Secretary-General also stated that, rather than maintaining a presence in Haiti with only administrative personnel, given the lack of financial resources, if the Assembly so wished, it could terminate the Mission and transfer its substantive activities to the United Nations Development Programme (UNDP).

90. Fortunately, contributions have been paid and MICAH has already begun its work, even though the Mission does not yet have all the personnel that it needs. It is encouraging to note that, the Representative of the Secretary-General in Haiti, Alfredo Lopes Cabral, is held in high esteem both in political circles and by civil society. This can only strengthen the authority of MICAH and facilitate the implementation

of its mandate. Mention will be made here only of the Human Rights Section, which should have a total of 31 advisers working in two fields, namely capacity-building and human rights monitoring. Efforts are being made to strengthen capacity in three sectors: State institutions (police, prisons, judicial system, and the Office of the Ombudsman), non-governmental organizations and civil society in general.

91. The expert wishes to highlight the extremely valuable contribution of MICIVIH, the Mission's predecessor, whose mandate was not renewed. In July 1999, MICIVIH was forced to release nearly half of its personnel on account of its financial difficulties. Now that MICAH is in place, the Office of the United Nations High Commissioner for Human Rights should immediately establish close ties of cooperation with the Mission. The independent expert is convinced that the aim should be to ensure a permanent presence of the Office of the High Commissioner in order to prevent a vacuum when MICAH ceases its activities. The expert had hoped that such an approach would be followed even before the departure of MICIVIH. Those hopes were not realized, however, even though there was some activity in the form of the organization of a human rights training programme for the benefit of non-governmental organizations.

92. The expert recommends that MICAH should go beyond the monitoring of human rights and place greater emphasis on capacity-building. Since one of the objectives of the Human Rights Section is to promote respect for democratic values, the expert recommends that a symposium should be held on the culture of democracy in which the principal leaders of political parties and leaders of civil society would participate. The Office of the High Commissioner could also continue the support provided to the Office of the Ombudsman and to non-governmental organizations active in the defence of human rights. In addition, the Office could assist the Haitian Government with the process of ratification of the principal human rights instruments, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights and the two Optional Protocols to the International Covenant on Civil and Political Rights.

XIII. Right to education

93. Access to education remains one of the major problems that Haiti faces, hence the launching in September 1999 by President Préval of a universal education programme to make up for the shortcomings in the implementation of the commitments given at the World Conference on Education for All: Meeting Basic Learning Needs, which was held at Jomtien (Thailand) in March 1990. As Georges G. Merisier, a member of the management committee of the National Education and Training Plan (PNEF) recalled, the aim was to achieve the following objectives by the year 2000: more childhood protection and development activities; universal primary education; improved apprenticeship results; greater access to basic education; and greater access by individuals and families to all educational avenues that can equip them with the knowledge, skills and values needed to improve their quality of life.

94. Despite the measures taken by the Haitian Government over the past decade, more than 500,000 children aged 6 to 11 years, or 33 per cent of children in this age group lack access to education. The average national net school enrolment rate is 67 per cent. However, according to the progress report on the implementation of the National Plan, this rate is 85 per cent in the department of the North-East and 51 per cent in the department of the Centre. These are huge disparities of which both the Prime Minister and the Minister of Education are fully aware and are attempting to address with the resources at their disposal.

95. It is also acknowledged that the level of training of teachers is rather low. The result is a high drop-out rate, with many pupils abandoning school before their sixth year of school, not to mention those students who repeat two and sometimes three years. As a result, in the sixth year of school, the number of students remaining represents less than 12 per cent of those who started out in the first year. This has led the managers of the PNEF to declare:

This situation is depleting the country's future human resources and causing the State and parents of students to lose a great deal of money. Unless major changes are made to the system in order to increase its efficiency, the State and parents will end up paying four times the amount that it costs to produce one primary school graduate.

96. The measures that have been taken to improve the quality of teaching include retraining programmes for over-age pupils in the formal school system. With a view to its implementation, a pilot project is currently being executed with the assistance of the United Nations Children's Fund (UNICEF) for an alternative programme targeted to over-age pupils. Another project seeks to mobilize human resources for the development of education in Haiti and is supported by the International Organization of la Francophonie and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The expert had an opportunity to discuss with the Prime Minister the type of relationship which the university should maintain with the society and the mediocre quality of teaching in law schools.

97. The Prime Minister described the universal education pilot programme currently under way in the department of the Centre, where the highest number of children to be schooled (50,000 children aged from 6 to 12 years) is located. The first phase began in January 2000, as a result of which 17,000 children, whose parents had not envisaged sending them to school on account of their poverty, were able to attend school. This was made possible through the combined efforts of the national education authorities supported by churches, non-governmental organizations, mayors' offices and heads of private schools, some of whom made available one or several classrooms, while others provided text books, notebooks and other supplies. The programme was supervised by a commission, whose members included representatives of the Ministry of Education and of civil society.

98. It is reassuring to note that this operation did not take into account the political affiliation of the families concerned. It should be noted in passing that the vice-chairman of this commission is a human rights defender who is also known for his opposition to the powers that be. For its part, the State took charge of the targeted teacher training, the provision of school uniforms to children and the school cafeterias. It is expected that the remaining 33,000 children will be enrolled in school by October 2000. There is no doubt that in this sector, the partnership between the Government, political organizations and civil society actors can only be beneficial for the realization of the right to education. This right is not limited solely to access to education; it is more than a battle against illiteracy. For this reason, while welcoming the efforts

of the Haitian authorities, the expert nonetheless draws attention to the medium-term dangers of functional illiteracy. This danger is real and stems from various factors, including: the proliferation of private schools (nearly 80 per cent of teaching is in private hands); the declining quality of teaching; the phenomenon of what are called "borlette" schools (named after a game of chance) — anyone, regardless of qualifications, can open a school; lax monitoring by the State up to now; and, lastly, schools being perceived as commercial enterprises. These factors raise fears that the scourge of functional illiteracy will replace that of illiteracy.

99. While it is a commonplace to say that young people are a country's future, there is a risk that future generations will be handicapped because they did not enjoy the right to education in the fullest sense. Education is one of the nation's priority investments in its future, for it is the only way to improve the economic and social conditions of the people. It must also be borne in mind that the strengthening of democracy depends on the level of education of the people.

XIV. Haitian migrants in the Dominican Republic

100. One cannot fail to make the link between extreme poverty in Haiti and the situation of Haitians and Haitian Dominicans living in the Dominican Republic. The independent expert was invited to take part in a symposium held at Montreal, Canada, on the topic of "The challenge of advancing the Haitian cause in the Dominican Republic". The participants in this symposium, organized by the Quebec Committee for the Recognition of the Rights of Haitian Workers in the Dominican Republic, condemned the escalating repression against Haitians and Haitian Dominicans as reported in the Dominican media, including canine-assisted manhunts in the border zone, arbitrary deportations, physical intimidation and other reprisals.

101. It is important to note that a report by the Inter-American Commission on Human Rights on the situation of Haitian migrants in the Dominican Republic stressed, in particular, the responsibility of the Dominican Republic with regard to the rights of Dominicans of Haitian descent. One need hardly recall the recommendations made to the Dominican Republic by the International Labour Organization since 1983.

These recommendations severely criticize the Government of the Dominican Republic for failing to comply with the international labour conventions.

102. The fate of Haitian migrants in the Dominican Republic is especially worrisome in that the extreme poverty that Haiti is experiencing is worsening day by day. The child mortality rate is 74 per cent; nearly 70 per cent of the Haitian workforce is unemployed; more than 75 per cent of Haitians are unable to provide for their needs. According to International Monetary Fund (IMF) figures cited in an article by Michael Dobbs in the *Washington Post* of 13 April 2000, 50 per cent of Haitian children under five suffer from malnutrition. Per capita income fell from \$600 in 1980 to \$369 currently. This dark picture, in other words, carries within it the seeds of violence.

XV. The murder of Jean Dominique

103. Such violence took the life of Jean-Léopold Dominique, who was murdered along with the security guard at the radio station of which he was director. We reiterated our request to the Haitian authorities to spare no effort to clear up this murder of a man who was a great Haitian patriot, a human rights defender and an activist for democracy.

104. Imprisoned by the dictatorship on several occasions, tortured and forced into exile, Jean Dominique nonetheless pursued his fight. When the Haitian people voted for their president in 1991, he stated that everything he had endured had been worthwhile. He was the one who told the *Miami Herald*:

You must understand, for Haitians to vote is more than it is in your country. It is the way for millions of people who live in dirt and poverty to prove to themselves that they are human. It is the difference between eternal darkness and light.

105. Was his death linked to the positions that he took during the election campaign? To the positions he took against the manufacturers of contaminated concentrates and the drug traffickers? Only an independent, impartial and objective inquiry can enlighten us. This inquiry is taking its course, as shown by the appearance of Dany Toussaint before the examining magistrate. Nevertheless, the expert was outraged by the fact that the supporters of this politician accompanied him to court and conducted themselves in a manner that was

tantamount to intimidating the judiciary. The expert reported this to the competent authorities, who will not fail to draw the attention of this citizen to his obligation to show due respect for the judicial authority. Jean Dominique paid with his life for the triumph of democracy. In this way, his death will not be in vain. In a text published in *Le Monde*, the philosopher Jean-Paul Sartre explains his views concerning the need for commitment here and now. These words of Sartre's acquire their fullest meaning as a tribute to Jean Dominique, who was wrested from the clasp of all fighters for human rights:

It has been said that the messenger from Marathon died an hour before arriving in Athens. He was dead and still running; he ran, dead, and announced Greece's victory, dead. This is a fine myth; it shows that the dead still act for a short time as though they were living. A short time, a year, 10 years, 50 years perhaps, a *finite* period, in any event; and then they are buried for the second time.

106. To paraphrase the Senegalese poet Birago Diop, let us proclaim loudly: Jean Dominique is not dead, he is in the voice of all Haitians enamoured of justice and freedom; he is in the voice of all human rights defenders who proclaim their horror at human rights violations in one country or another; he is in the resolution that the General Assembly will adopt to ensure the protection of fundamental freedoms in Haiti and the return of the documents seized from the headquarters of the Haitian Armed Forces and of the Front révolutionnaire pour l'avancement et le progrès en Haïti (FRAPH), for which Jean Dominique always fought.

XVI. Conclusion

107. Haiti is going through a period of profound change which has seen the sudden emergence of the grass roots into politics. While it is fortunate that people are taking charge of their destiny, it is nonetheless necessary to ensure that their conduct is that of citizens. In addition, it is essential for the political leaders to make a genuine commitment to the fight to strengthen the culture of democracy, defined as a system of knowledge, feelings, symbols, beliefs and practices characterized, in particular, by absolute respect for the law, civic virtue, political dialogue, the status of the opposition, tolerance, the rejection of

violence and the guarantee of fundamental human rights. Within the schools, civic education was reintegrated as "education for citizenship". The curriculum was launched in April with a teacher training session. The basic component of the programme is the question of rights and responsibilities. Today, whatever the outcome of the electoral crisis, one gain has been made: people have become aware of the importance of having a voter registration card. They are discovering that they have the power to send their freely elected representatives to Parliament, and also to get rid of them, when the time comes, if their deepest aspirations are not taken into account. So one must not lose hope for Haiti. The valiant Haitian people, who fought hard to win the right to freedom, who then experienced the United States occupation, the reign of the Tontons Macoutes, and other forms of authoritarian government too numerous to mention, now aspires only to live in dignity. On 1 January 2004, the entire Haitian people, together with all the black peoples and all those enamoured of peace, justice and freedom, will celebrate the bicentennial of the first independent black republic. This bicentennial should be the opportunity for the entire world to do justice to Toussaint L'Ouverture, to pay tribute to Haiti through this man for his contribution to the establishment of peace in the Americas and the Caribbean. One cannot fail to mention here the words of Ambassador Luis J. Lauredo, United States representative:

My first words are to the people of Haiti. I have always been inspired by the historic struggle of the people of Haiti to achieve independence and freedom. Haiti was the first independent republic in the Latin American and Caribbean region. Haitians actively assisted the independence movements of the United States and many Latin American countries. No people in the Americas have struggled longer and paid such sacrifices in their pursuit of freedom, democracy and human dignity.

108. In citing these words of Ambassador Lauredo, the independent expert wished to testify before the General Assembly, as, for that matter, he did at the fifty-sixth session of the Commission on Human Rights, to the tireless efforts of the Group of Friends of the Secretary-General for Haiti (Argentina, Canada, Chile, France, the United States of America and Venezuela), and to express to them his gratitude for the attention

and support which they have given him in the fulfilment of his mandate. He would have liked to see other countries, particularly those in Africa, despite the burden of their financial difficulties and other constraints, provide support, however symbolic, for the Haitian people's struggle for democracy and respect for human dignity.